KA/ BG-GPO/2515/WPP-47/2006-2008 ಸುವರ್ಣ ಕರ್ನಾಟಕ 2006



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೪೧	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಫೆಬ್ರವರಿ ೨, ೨೦೦೬ (ಮಾಘ ೧೩, ಶಕ ವರ್ಷ ೧೯೨೭)	ಸಂಚಿಕೆ ೫

ಭಾಗ - ೪

ಕೇಂದ್ರದ ವಿಧೇಯಕಗಳು ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ಕೇಂದ್ರದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರ ಸರ್ಕಾರದವರು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ಶಾಸನಬದ್ಧ ಆದೇಶಗಳು ಮತ್ತು ರಾಷ್ಟ್ರಪತಿಯವರಿಂದ ರಚಿತವಾಗಿ ರಾಜ್ಯ ಸರ್ಕಾರದವರಿಂದ ಪುನಃ ಪ್ರಕಟವಾದ ಆದೇಶಗಳು.

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ

ಅಧಿಸೂಚನೆ

ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 2 ಕೇನಿಪ್ರ 2006, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 16ನೇ ಜನವರಿ, 2006

2005ನೇ ಸಾಲಿನ ಡಿಸೆಂಬರ್ 5ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ-II ಸೆಕ್ಷನ್ 3(ii)ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ S.O.1708(E) [Notification F.C. No.IV/ 16/ 131/ 2005-Tech-BG-II] ದಿನಾಂಕ:19.07.2005ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

MINISTRY OF FINANCE
(Department of Revenue)
NOTIFICATION
(OFFICE OF THE COMMISSSIONER OF CENTRAL EXCISE)
Bangalore, the 19th July, 2005
No.1/ 2005-Cus. (N.T.)

S.O. 1708(E).- In exerise of the powers delegated to the undersigned vide Notification No.33/ 94-Cus (N.T.) dtd. 1st July, 1994 by the Government of India, Ministry of Finance, Department of Revenue, New Delhi under clause (a) of Section 152 of the Customs Act, 1962, I, hereby declare the Sy. Nos. 38, 59, 60 & 61 of the Village Doddabyaladakere, Hosadurga Taluk, Chitradurga District, in the State of Karnataka to be Warehousing Station under Section 9 of the Customs Act, 1962 for the limited purpose of setting up of 100% EOU.

[F.C. No.IV/ 16/ 131/ 2005 Tech-BG-II]
A.K. SRIVASTAVA, Commissioner.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ
ಕೆ. ನೀಲಕಂಠಾಚಾರ್
ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ,
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ (ಪ್ರಭಾರ),
ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

ಪಿ.ಆರ್. 4

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ

ಅಧಿಸೂಚನೆ

ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 3 ಕೇನಿಪ್ರ 2006, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 16ನೇ ಜನವರಿ, 2006

2005ನೇ ಸಾಲಿನ ನವೆಂಬರ್ 25ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ-II ಸೆಕ್ಷನ್ 3(ii)ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ S.O. 1658(E) [Notification. F.No.468/ 16/ 2005-Cus-V] ದಿನಾಂಕ:25.11.2005ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

MINISTRY OF FINANCE

(Deparment of Revenue)

(CENTRAL BOARD OF EXCISE AND CUSTOMS)

NOTIFICATION

New Delhi, the 25th November, 2005

No.104/ 2005 (NT)-CUSTOMS

S.O. 1658(E):- In exercise of the powers conferred by sub-clause (i) of cluase (a) of sub-section (3) of section 14 of Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.95/ 2005-NT-Customs, Dated the 26th October, 2005 [S.O. 1541 (E) dated the 26th October, 2005], the Board hereby determines for the purposes of said section, relating to **imported goods,** that the rate of exchange of conversion of each of the foreign currency specified in column (2) of each of Schedule I and Schedule II appended hereto into Indian currency or vice versa shall, with effect from the 1st December, 2005, be the rate mentioned against it in the corresponding entry in column (3) thereof.

SCHEDULE-I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees
1.	Australian Dollar	34.00
2.	Canadian Dollar	39.25
3.	Danish Kroner	7.30
4.	EURO	54.45
5.	Hong Kong Dollar	5.95
6.	Norwegian Kroner	6.90
7.	Pound Sterling	79.25
8.	Swedish Kroner	5.70
9.	Swiss Franc	35.15
10.	Singapore Dollar	27.20
11.	US Dollar	45.95

SCHEDULE-II

Sl. No.	Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees
1.	Japanese Yen	38.80

[F.No.468/ 16/ 2005-Cus.-V]

S.P. RAO, Under Secy.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ

ಕೆ. ನೀಲಕಂಠಾಚಾರ್

ಪಿ.ಆರ್. 5

ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ,
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ (ಪ್ರಭಾರ),
ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ

ಅಧಿಸೂಚನೆ

ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 4 ಕೇನಿಪ್ರ 2006, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 16ನೇ ಜನವರಿ, 2006

2005ನೇ ಸಾಲಿನ ನವೆಂಬರ್ 25ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ-II ಸೆಕ್ಷನ್ 3(ii)ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ S.O. 1659(E) [Notification. F.No.468/ 16/ 2005-Cus-V] ದಿನಾಂಕ:25.11.2005ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

MINISTRY OF FINANCE
(Deparment of Revenue)
(CENTRAL BOARD OF EXCISE AND CUSTOMS)
NOTIFICATION
New Delhi, the 25th November, 2005
No.105/ 2005 (NT)-CUSTOMS

S.O. 1659(E):- In exercise of the powers conferred by sub-clause (i) of cluase (a) of sub-section (3) of section 14 of Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.96/ 2005-NT-Customs, Dated the 26th October, 2005 [S.O. 1542 (E) dated the 26th October, 2005], the Board hereby determines for the purposes of said section, relating to **export goods,** that the rate of exchange of conversion of each of the foreign currency specified in column (2) of each of Schedule I and Schedule II appended hereto into Indian currency or vice versa shall, with effect from the 1st December, 2005, be the rate mentioned against it in the corresponding entry in column (3) thereof.

SCHEDULE-I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees
1.	Australian Dollar	33.50
2.	Canadian Dollar	38.80
3.	Danish Kroner	7.20
4.	EURO	53.80
5.	Hong Kong Dollar	5.90
6.	Norwegian Kroner	6.80
7.	Pound Sterling	78.40
8.	Swedish Kroner	5.65
9.	Swiss Franc	34.65
10.	Singapore Dollar	26.90
11.	US Dollar	45.60

SCHEDULE-II

Sl. No.	Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees
1.	Japanese Yen	38.30

[F.No.468/ 16/ 2005-Cus.-V]
S.P. RAO, Under Secy.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ
ಕೆ. ನೀಲಕಂಠಾಚಾರ್
ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ,
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ (ಪ್ರಭಾರ),
ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

ಪಿ.ಆರ್. 6

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ
ಅಧಿಸೂಚನೆ
ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 7 ಕೇನಿಪ್ರ 2006, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 16ನೇ ಜನವರಿ, 2006

2005ನೇ ಸಾಲಿನ ಡಿಸೆಂಬರ್ 2ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ-II ಸೆಕ್ಷನ್ 3(i)ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ G.S.R.702(E) [Notification. F.No.26011/ 03/ 2005-IC-I] ದಿನಾಂಕ:02.12.2005ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

MINISTRY OF HOME AFFAIRS
NOTIFICATION
New Delhi, the 2nd December, 2005

G.S.R. 702(E):- In exercise of the powers conferred by section 18 of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby makes the following rules further to amend the Citizenship Rules, 1956, namely:

1. (1) These rules may be called the Citizenship (third Amendment) Rules, 2005.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In Citizenship Rules, 2005, (hereinafter referred to as the said rules), in rule 25E,-

(i) in sub-rule (1), for the words "two weeks", the words "four weeks" shall be substituted;

(ii) sub-rule, "(ii)" shall be renumbered as "(2)";

(iii) in sub-rule (2) so renumbered, for the words "three months", the words "four months" shall be substituted.

3. In the said rules, in Schedule I, for Forms XIX and XX, the following Forms shall be substituted, namely:

"FORM XIX
(See rule 25B)

Application for registration as an overseas citizen of India under section 7A of the Citizenship Act, 1955.

PART-A (for each applicant of the family)
First Applicant Details

Signature Box

Affix your photo of 35x35 mm Size

1.	Surname	
2.	Given Name*	
3.	Sex and Date of Birth* (DD/MM/YYYY)	
4.	Place of Birth with country*	
5.	Father/ Guardian's Name*	
6.	Mother's Name*	
7.	Nationality*	
8.	Passport No.and Date of Issue*	
9.	Place of Issue*	
10.	Occupation*	
11.	Visible Distinguishing Mark*	
12.	Present Address*	
13.	E-Mail ID and Phone No.	
14.	Whether PIO Card holder?	Yes/ No [If yes, give* details]
	PIO Card No. & Date of Issue	
	Valid Upto	
	File No.& Place of Issue	

Spouse Applicant Details

Signature Box

Affix your photo of 35x35 mm Size

1.	Surname	
2.	Given Name*	
3.	Sex and Date of Birth* (DD/MM/YYYY)	
4.	Place of Birth with country*	
5.	Father/ Guardian's Name*	

6.	Mother's Name*	
7.	Nationality*	
8.	Passport No.and Date of Issue*	
9.	Place of Issue*	
10.	Occupation*	
11.	Visible Distinguishing Mark*	
12.	Present Address*	
13.	E-Mail ID and Phone No.	
14.	Whether PIO Card holder?	Yes/ No [If yes, give* details]
	PIO Card No. & Date of Issue	
	Valid Upto	
	File No.& Place of Issue	

Minor Child-1 Applicant Details

Signature Box

Affix your photo of 35x35 mm Size

1.	Surname	
2.	Given Name*	
3.	Sex and Date of Birth* (DD/MM/YYYY)	
4.	Place of Birth with country*	
5.	Father/ Guardian's Name*	
6.	Mother's Name*	
7.	Nationality*	
8.	Passport No.and Date of Issue*	
9.	Place of Issue*	
10.	Occupation*	
11.	Visible Distinguishing Mark*	
12.	Present Address*	
13.	E-Mail ID and Phone No.	
14.	Whether PIO Card holder?	Yes/ No [If yes, give* details]
	PIO Card No. & Date of Issue	
	Valid Upto	
	File No.& Place of Issue	

Minor Child-2 Applicant Details

Signature Box

Affix your photo of 35x35 mm Size

1.	Surname	
2.	Given Name*	
3.	Sex and Date of Birth* (DD/MM/YYYY)	
4.	Place of Birth with country*	

5.	Father/ Guardian's Name*	
6.	Mother's Name*	
7.	Nationality*	
8.	Passport No.and Date of Issue*	
9.	Place of Issue*	
10.	Occupation*	
11.	Visible Distinguishing Mark*	
12.	Present Address*	
13.	E-Mail ID and Phone No.	
14.	Whether PIO Card holder?	Yes/ No [If yes, give* details]
	PIO Card No. & Date of Issue	
	Valid Upto	
	File No.& Place of Issue	

PART-B (Other details of applicant(s))

15.	Have you/ any member of your family applied for OCI registration earlier?	Yes/ No
	If yes, give details (Reference No., when and where applied and what was the outcome)	
16.	Does the country of applicant(s) permit dual citizenship in some form or the other?	Yes/ No
	If no, give specific details	
17.	Whether the applicant(s) sought asylum before applying for present citizenship?	Yes/ No
	If yes, give specific details when and why.	
18.	Is (are) the applicant(s) or had ever been citizen of Pakistan or Bangladesh at any time?	Yes/ No
	If yes, give specific details.	
19.*	Date and method of acquisition of present Nationality (By Birth/ Descent/ Registration/ Naturalization/ Any other, specify) of the applicant(s).	
20.	Previous Nationality of the applicant (s).	
21.	Address of Employer:	
	First Applicant:	
	Spouse Applicant:	
	Minor Child-1:	
	Minor Child-2:	
22.	Details of family members, who are staying in India, if any.	

Sl. No.	Name	Present address	Relationship	Age

23.	Details of criminal proceedings against the applicant (s), if any, anywhere.

Applicant(s) Name	Date of incidence	Place of incidence	Nature of incidence	Outcome of criminal proceedings, if any

24.*	I/We,........................do solemnly and sincerely declare that the foregoing particulars stated on this application are true, and I/We make this solemn declaration conscientiously believing the same to be true.

Date.................. Signature.................... Signature............
Place................ (first applicant) (Spouse applicant)

****Application for Minor(s)**

I am a parent/ guardian of...........................to whom the foregoing particulars relate I hereby apply on behalf of my/ the child (children) for his/her/ their registration as an overseas citizen(s) of India.

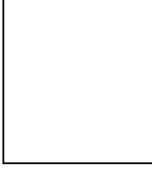
Date........................... Signature of first applicant............

Note: Fields marked by *should be filled in mandatorily.

** To be filled only for minor applicant(s).

FORM-XX
(See rule 25 G)
CERTIFICATE OF REGISTRATION
Overseas Citizen of India

No.



Surname____________________________________
Given Name(s)________________________________
Nationality________________Sex__________Date of Birth_________
Place of Birth____
Occupation____
Name of Father/ Legal Guardian_______________________________
Name of mother____
Address____
____
Passport No.______________Date of issue___________Place of issue_____________
Visible Distinguishing Mark of OCI Certificate Holder____________________________
File No.____
Place of issue____________________________Date of issue___________________

This is to certify that the person whose particulars are given in this Certificate has been registered as an Overseas Citizen of India under the provisions of Section 7A of the Citizenship Act, 1955.

Signature and Seal of issuing authority.

[F.No.26011/ 03/ 2005-IC-I]

DURGA SHANKAR MISHRA, Jt. Secy.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ

ಕೆ. ನೀಲಕಂಠಾಚಾರ್

ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ,
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ (ಪ್ರಭಾರ),
ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

ಪಿ.ಆರ್. 7

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ

ಅಧಿಸೂಚನೆ

ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 9 ಕೇನಿಪ್ರ 2006, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 19ನೇ ಜನವರಿ, 2006

2005ನೇ ಸಾಲಿನ ನವೆಂಬರ್ 23ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ-II ಸೆಕ್ಷನ್ 3(i)ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ S.O.1638(E) [Notification. F.No.RW/ NH-37011/63/ 2005-PIC] ದಿನಾಂಕ:17.11.2005ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

MINISTRY OF SHIPPING, ROAD TRANSPORT AND HIGHWAYS
NOTIFICATION
(Department of Road Transport and Highways)
New Delhi, the 17th November, 2005

S.O. 1638(E):- Wheras, vide notification of the Government of India in the earstwhile Ministry of Surface Transport (Roads Wing), number S.O. 78(E) dated the 4th February, 1999 issued under section 11 of the National Highways Authority of India Act, 1988 (68 of 1988), the Central Government entrusted the stretch from Km 0.00 to Km 592.00 (Bangalore to Karnataka/ Maharashtra Border) of National Highway No.4 in the State of Karnataka to the National Highways Authority of India;

Now, therefore, in exercise of the powers conferred by section 7 of the National Highways Act, 1956 (48 of 1956), read with rule 3,5 and 11 of the National Highways (Fees for the Use of National Highways Section and Permanent Bridge- Public Funded Project) Rules, 1997 and sub-rule (2) fo rule 3 of the National Highways (Rate of Fee) Rules, 1997, the Central Government hereby notifies that there shall be levied and collected by the National Highways Authority of India departmentally or through a private contractor who may be appointed on the basis of competitive bidding, a fee on mechanical vehicles for the use of the four-laned stretch from Km. 404.000 to Km 351.000 (Ankadakanna to Gabbur Section) of National Highway No.4 in the State of Karnataka at the rates specified in the Schedule annexed hereto in perpetuity. The collection of fee shall commence within thirty days from the date of publication of this notification in the Official Gazette or within thirty days from the date of opening of the said four- laned

stretch to traffic, whichever is later. The rates of fee are subject to revision as per the provisions of sub-rule (3) of rule 3 of the National Highways (Rate of Fee) Rules, 1997.

SCHEDULE

Rates of fee to be recovered from the users of Four-Laned Stretch from Km 404.000 to 351.000 (Ankadakanna to Gabbur) of National Highway No.4 in the State of Karnataka.

The fee shall only be collected at a single location within the stretch.

Serial Number	Particulars of Vehicle	Fee rate for Vehicle for one way trip (for 53.000 (Km. length) (In Rupees)	Fee rate for multiple trips in a day (In Rupees)
1.	Car or Jeep or Van	30	45
2.	Light Commercial Vehicle	55	80
3.	Truck or Bus	105	160
4.	Heavy construction machinery and earth moving equipment.	225	340

Note:

1. When the same mechanical vehicle has to cross the said stretch of the National Highway more than once in a day, the user shall have the option to pay the fee for the multiple trips at the rates as given in Schedule above while crossing the gate in first trip itself or if the same mechanical vehicle has to use the said four laned stretch frequently for the entire month, the vehicle owner may obtain a monthly pass on the payment of charges equivalent to 30 single rates applicable to it, as specified in the aforesaid Schedule.

Explanation:

For the purpose of this notification, "day" shall be counted as a continuous period of twenty-four hours.

2. The following types fo vehicles shall be exempted from the fee specified above in the Schedule, namely:

(i) vehiles,-

(A) Officially belonging to-

(a) the President of India;
(b) the Vice President of India;
(c) the Governor of a State or the Lt. Governor of a Union Territory;
(d) a Foreign Dignitary on State visit to India;
(e) a Foreign Diplomat stationed in India using cars with "CD"/ "CC" number place;
(f) the Chairman of the Rajya Sabha or the Speaker of the Lok Sabha or the Chairman of a State Legislative Council or the Speaker of a State Legislative Assembly or a Minister of the Union or State, or the Leader of Opposition in the Lok Sabha or the Rajya Sabha or a State Legislature having the status of a Cabinet Minister, if he is sitting in the vehicle; or
(g) a Member of Parliament, in the entire country, or a Member of the Legislative Assembly of a State or a Member of Legislative Council of a State, in the respective State, if he produces his identity card issued by the Parliament or the concerned Legislature of the State, as the case may be;

(B) belonging to the winner of a Gallantry award such as Param Vir Chakra, Ashok Chakra, Maha Vir Chakra, Kirti Chakra, Vir Chakra and Shaurya Chakra, if such awardee produces his photo identity card duly authenticated by the Competent Authority for such Award.

(ii) Defence vehicles, Police vehicles, Fire-fighting vehicles, Ambulances, Funeral vans, vehicles of the Department of Post and Telegraph and Central Government and State Government vehicles on duty.

3. The rates of the fee, the categories of vehicles exempted from the payment of the fee and the name, address and telephone number of the authority to whom complaints, if any, should be addressed, shall be conspicuously and prominently displayed 500 meters ahead of the toll booths, 100 meters ahead of the toll booths and at the tool booths as well. The height of the display boards and size of letters will be such that it is easy for the drivers to read the display boards and they shall be legibly written or printed in English, Hindi and the regional language of the area in which the stretch is situated.

4. No fee shall be levied and collected from a mechanical vehicle, which is not covered by the said Schedule.

[F.No.RW/NH-37011/63/2005-PIC]
PRABHAKAR, Dy. Secy.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ
ಕೆ. ನೀಲಕಂಠಾಚಾರ್
ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ,
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ (ಪ್ರಭಾರ),
ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

ಪಿ.ಆರ್. 10

ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಸಚಿವಾಲಯ

ಅಧಿಸೂಚನೆ

ಸಂಖ್ಯೆ: ಸಂವ್ಯಶಾಇ 10 ಕೇನಿಪ್ರ 2006, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 19ನೇ ಜನವರಿ, 2006

2005ನೇ ಸಾಲಿನ ನವೆಂಬರ್ 23ನೇ ದಿನಾಂಕದ ಭಾರತ ಸರ್ಕಾರದ ಗೆಜೆಟ್‌ನ ವಿಶೇಷ ಸಂಚಿಕೆಯ ಭಾಗ-II ಸೆಕ್ಷನ್ 3(i)ರಲ್ಲಿ ಪ್ರಕಟವಾದ ಈ ಕೆಳಕಂಡ S.O.1639(E) [Notification. F.No.1/7/ (i)/ 2005-IR] ದಿನಾಂಕ:23.11.2005ಅನ್ನು ಸಾರ್ವಜನಿಕರ ಮಾಹಿತಿಗಾಗಿ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪತ್ರದಲ್ಲಿ ಮರು ಪ್ರಕಟಿಸಲಾಗಿದೆ.

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)
NOTIFICATION
New Delhi, the 23rd November, 2005

S.O. 1639(E):- In pursuance of sub-section (3) of Section 12 of the Right to Information Act, 2005 (22 of 2005), the President is pleased to appoint Shri Wajahat Habibullah as the Chief Information Commissioner with effect from the 26th October, 2005.

[F.No.1/7(i)/2005-I.R.]
T. JACOB, Jt. Secy.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ
ಕೆ. ನೀಲಕಂಠಾಚಾರ್
ಸಹಾಯಕ ಪ್ರಾರೂಪಕಾರ ಮತ್ತು ಪದನಿಮಿತ್ತ,
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ (ಪ್ರಭಾರ),
ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳು ಮತ್ತು ಶಾಸನ ರಚನೆ ಇಲಾಖೆ.

ಪಿ.ಆರ್. 11

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi
NOTIFICATION
ಸಿ.ಆ.ಸು.ಇ.12 ಚುಕ 05, ದಿನಾಂಕ: 10ನೇ ಜನವರಿ, 2006

Dated: 22nd December, 2005
01 Pausa, 1927 (Saka)

No.82/ KT-LC/ 1/ 2005 In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order dated 23rd May, 2005 of the High Court of Karnataka at Bangalore in Election Petition No.4 of 2002.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
Dated this the 23rd day of May, 2005
BEFORE:
THE HON'BLE MR JUSTICE D.V. SHYLENDRA KUMAR
Election Petition No.4 of 2002

Between:

Sri A. Devegowda, S/o Allappa Gowda,
Aged about 47 years,
No.1523, 'Sri Maruthi Nilaya' 11th Main Road,
Vijayanagar, Bangalore-560040. ....PETITIONER
[By Sri Shivanand, Adv., for M/s Law Associates, Advs]

And:

1. Sri Puttanna
(father's name not known to the petitioner)
Major, R/o Kadamkannahalli, Ele Thotadahalli Post, Virupakshipura Hobli, Chennapatana taluk, Bangalore Rural District, Also at No.58, 6th Cross Basaveshwara Layout, Vijayanagar, Bangalore-560040.

2. Sri K. Narahari
(father's name not known to the petitioner)
Major, R/o 'Chaithanya' No.55, Old No.1357, 3rd Main Road, Srirampuram, Bangalore-560021.

3. K. Devegowda,
(father's name not known to the petitioner)
Major, R/o Kotagallu, Kotagallu hobli and post, Ramapura taluk, Bangalore Rural District.

4. Dyavegowda, Kodamballi,
(father's name not known to the petitioner)
Major, R/o Kodamaballi, Virupakshipura Hobli, Chennapatna Taluk, Bangalore rural District.

5. Dyavegowda Guvapura,
(father's name not known to the petitioner)
Major, R/o Guvapura, Virupakshipura Hobli, Chennapatna Taluk, Bangalore Rural District.

6. T.M. Dhanaraju,
(father's name not known to the petitioner)
Major, R/o No.77, 4th Cross, 9th Main Road, III Phase Nagarabhavi I Phase, Bangalore-560072.

7. C.N. Narahari,
(father's name not known to the petitioner)
Major, R/o No.1363 Jattighara Street, Chennapatna Fort Chennapatna, Bangalore Rural District.

8. Narahari Roa,
(father's Name not known to the petitioner)
Major, R/o 'Thiyalukrupa' Opp. Govt. Urdu School, Upparahalli, Tumkur.

9. K. Mallaiah,
(father's name not known to the petitioner)
Major, R/o No.324, 7th Main, III Phase, Banashankari, Behind Vidhya Peeta, Bangalore-560085.

10. B.R. Ramegowda,
(father's name not known to the petitioner)
Major, R/o No.14, 14th Cross, 10th Main Road, Hombegowdanagar, Bangalore-560030. ....RESPONDENTS

[M/s G.V. Shantharaju & H.N. Shashidhara, Advs., for R-1]
[M/s Deshraj & P. Changalaraya Reddy, Adv., for R-9; R2 to R8 & R10 served but unrepresented]

This election petition is filed under Section 81 of the Representation of People Act, 1951, praying to declare the election of the 1st respondent to Karnataka Legislative Council from Bangalore Teachers Constitutency as void and illegal for improper reception of void votes in his favour and for having committed corrupt practices and etc.

This petition, having heard and reserved, coming on for pronouncement of orders, this day, the Court made the following:-

ORDER

This election petition presented under Section 81 of the Representation of People Act, 1951 (for short, the Act) by an unsuccessful candidate in the biennial elections held to elect a representative to represented Bangalore Teacher's Constituency in the Karnataka Legislative Council, prays for a declaration that the election of first respondent, who has been declared elected from this constituency, is void and illegal, for not only having received void votes in his favour but also for having indulged in corrupt practices during the election and to further declare the petitioner as duly elected for the seat from the Bangalore Teacher's Constituency to the Karnataka Legislative Council, Petitioner has also prayed for awarding costs.

2. While the grounds urged in support of the petition for setting aside the election of first respondent are as contemplated in Section 100(1)(b) and also as provided for in Section 100 (1)(d), particularly Clausets (i), (ii) and (iii) of this subsection, and the petitioner has sought for a declaration that the election of the returned candidate is void, the petitioner has also sought for a further prayer to declare him to be the

duly elected person in place of first respondent, particularly invoking the provisions of Section 101(b) of the Act.

3. Petition averments indicate that there were eleven candidates who had aspired for being declared elected from this constituency; that the system of voting is by single transferable preferential vote; that the returned candidate in terms of the certificate in form No 23 issued by the Returning Officer on 25-06-2002 giving the details of the pattern of voting and the votes secured by the candidates, indicates that at the end of the tenth round of counting, while, the petitioner had managed to secure in all 3194 votes and was the last person i.e. tenth person to be eliminated, the first respondent-the winning candidate- had secured a total number of 3771 votes and was accordingly declared elected by the Returning Officer. The elections themselves were conducted on 23.06.2002 and the result was declared on 26.06.2002, while the notification notifying the calendar of events was issued on 29.05.2002. The calendar of events indicated that the nominations could be filed from 29.05.2002 and the last date for filing nominations was 05.06.2002, scrutiny was on 06.06.2002, last date for withdrawal was on 08.06.2002 and the polling was on 23.06.2002, as stated above.

4. While the returned candidate figures as first respondent, the other candidates in the fray figure as respondents 2 to 10 to the election petition. The election petition was presented on 09.08.2002 at 4.00 pm before the Registrar (Judicial) in the High Court. Summons were issued to the respondents on 13.08.2002.

5. The first respondent- returned candidate- on being served, has entered appearance through his counsel and has contested the petition.

6. The first respondent has filed his written statement and had come up with an application in 1A No.1/ 2002, for striking out the pleadings.

7. Amongst the other respondents, while ninth respondent was represented by a counsel, no written statement was filed. Rest of the respondents though served, have remained unrepresented and have not contested the petition. The contest in effect is between the petitioner and the first respondent.

8. Learned counsel for the petitioner on having taken time to file objections to IA-I for striking out pleading, has filed such objections. Sri G.V. Shantharaju, learned Senior Counsel, appearing for the first respondent and Sri Shivanand, learned counsel for the petitioner, were heard on IA-I/2002 and in terms of order passed on 22.07.2003, paragraphs 8,9,10,11,12,13 and 14 containing the averments relating to improper reception of votes and such improper reception of votes having materially affected the outcome of the election, were ordered to be struck off. What really survived for consideration in this petition are the averments in paragraphs 15 and 16, relating to the allegation of corrupt practices.

9. In the light of the surviving averments of the petition in terms of the order dated 22.07.2003, and the averments made in the written statement, this court framed the following issues on 14.08.2003:

1. *Whether the petitioner proves that the first respondent has committed corrupt practice of bribery by distributing the hot cases and ball pens to the voters to vote for him, within the meaning of Section 123(1) of the Representation of People Act, 1951?*
2. *Whether the petitioner proves that the corrupt practice of bribery is committed by the respondent's supporters with his consent by distributing hot cases and ball pens to the voters to vote for respondent No.1.*
3. *Whether the petitioner proves that the election of 1st respondent is liable to be set aside under Section 100(1)(b) of the Representation of People Act, 1951 and the petitioner is entitled to be declared as duly elected under Section 101 of Representation of People Act, 1951?*

10. Parties went to trial on these issues. On behalf of the petitioner as many as 13 witnesses were examined, petitioner figuring as PW4, and as many as 24 documents- Exp1 to 24- were marked. First respondent has examined himself as DW1 and no documents have been exhibited.

11. The only real issue that had survived in this election petition was as to whether the petitioner was able to bring home the allegation of corrupt practice of bribery by distribution of certain inducements such as hot cases and ball pens, to the voters by the first respondent to get their votes, and if so, as to whether the election of first respondent was liable to be set aside in terms of the provisions of Section 100(1)(b) of the Act.

12. At the conclusion of the recording of evidence and when the matter was taken up for arguments, Sri G.V. Shantharaju, learned counsel for the first respondent, has raised a preliminary objection that even on a perusal of the averments made in paragraphs 15 and 16 of the election petition, relating to allegation

of corrupt practices, and on which avernments issues had been framed and parties had gone to trial, and contended that the avernments in paragraph-15 lacked material facts as is required under Section 83(1)(a) of the Act; that the contents of paragraph-15 viz., that the first respondent along with his supporters had visited the residences and schools of the voters and while seeking their support and vote in his favour, had distributed hot cases and ball pens to the voters with the inscription: ***"With compliments from Puttanna"*** to them also did not provide full particulars of both sub-clauses (a) and (b) to sub-section (1) of Section 83 of the Act and as such, the election petition was liable to be summarily dismissed. It is the specific argument of Sri G.V. Shantharaju, learned counsel for the first respondent, that in the absence of full particulars such as place, time and date of committing of alleged corrupt practice and the averments not having named the persons who in effect had received the inducements such as gift articles either from the first respondent or his agents, the petition clearly lacks the full particulars contemplated in sub-clause (b) of sub-section (1) of Section 83 of the Act.

13. The question is as to whether for examination of this contention, the evidence let in by the parties has to be looked into or even without examining such evidence, if the question can be answered in favour of the first respondent as to whether the petition could be dismissed as one not conforming to the requirement of Section 83 of the Act i.e. the argument was that if the petition lacks proper plea in terms oif Section 83 of the Act itself, the question of making good the plea through supporting evidence does not arise at all. If this arguments is to be accepted, then the evidence let in on behalf of the petitioner assuming that it is supportive of the plea, will not in any way further the petition averments. It is in this context Sri G.V. Shantharaju, learned Senior Counsel has placed reliance on the decision of the Supreme Court in the case of ***DAULAT RAM vs ANAND SHARMA [AIR 1984 SC 621].*** However, learned counsel for the first respondent has also submitted arguments, touching upon the quality of evidence let in by the petitioner, that it is not trustoworthy; that such evidence cannot be believed; that the petitioner has failed to cogently and categorically establish that the first respondent had in fact indulged in any corrupt practice; that the petitioner has miserably failed to prove beyond reasonable doubts the incidents of corrupt practice allegedly indulged in by the first respondent or his supporters; that the degree of proof required for proving a plea of corrupt practice in an election petition for setting aside the election of returned candidate is the same as in a criminal case; that the petitioner in this case has miserably failed to prove the alleged corrupt practice.

14. It is to be borne in mind that the parties had gone through the process of striking out the pleadings as contemplated under the provisions of Order VI Rule 16 of Code of Civil Procedure and the petition avernment as of now and on which the parties went to trial were those avernments which had remained, after this court had passed orders on the application filed under Order VI Rule 16 CPC. In this regard, Sri G.V. Shantharaju, learned counsel for the first respondent very fairly submitted that the stage of striking out the pleadings was over and argument made is not one for striking out the remaining pleadings, but the arguments is only to demonstrate that the pleadings that survive now in the petition, particularly the pleading relating to allegation of corrupt practice failed to conform to the requirement of Section 83 of the Act, as that is the only ground on which the election petition had remained and survived for consideration and also that it lacked the full particulars of such corrupt practice as is contemplated in clause (b) of sub-section (1) of section 83 of the act and that the election petitioner has failed to satisfy both the requirements viz., the requirement of the petition pleadings containing concise statement of material facts and the further requirement of setting forth the full particulars of any corrupt practice, including the date and place of commission of each such corrupt practice.

15. While it is true that an election petition should definitely contain material facts and also particulars of corrupt practice against a returned candidate if one is alleged, it is not necessary that what can be established by letting in evidence also should have been pleaded. The distinction between the plea and the evidence should always be borne in mind and if the petition contains plea which can roughly conform to the requirement of clause (b) of Sub-section (1) of Section 83 of the Act, then, it becomes necessary for the court to evaluate the evidence that is placed before the court in support of such plea and to arrive at a decision on the petition in the light of supporting evidence placed by the parties before the court.

16. Paragraph-15 of the election petition reads as under:

15. The petitioner submits that the 1st respondent has also committed corrupt practice of bribery within the meaning of Sec. 123(1) of the Representation of People Act, 1951. The petitioner submits that on 21st and 22nd June 2002 after the campaigning period came to an end, the 1st

respondent along with his supporters went to the residence and the schools of the voters where they were working in the guise of soliciting votes either in the morning, during evening and during working hours of the school, distributed hot cases and ball pens to the voters which were carrying inscription "with compliments from Puttanna" to woo them. The 1st respondent has purchased multi colour hot cases of Cello brand work of Rs.103/- and Luxur ball pens worth Rs.60/- were being distributed to woo the voters in the aforesaid election. The petitioner's political party i.e. Karnataka Pradesh Congress Committee had complained to the Election Commission of India through Chief Electoral Officer in Karnataka about the said distribution of hot boxes and luxur ball pens on 22.06.2002. The copy of the said complaint is produced herewith and marked as ANNEXURE-K Similarly, one Sri Rangaswamy has filed a complaint before the jurisdictional Kamakshipalya Police Station on 22nd June 2002, complaining about the carrying of the above said hot case and luxur ball pen and being distributed to the teachers who are the voters of the constituency in Peenya, Kamalanagar, Hegnahalli, Laggere and Kamakshipalya area of Bangalore City and the same was being carried in a Tata Sumo vehicle bearing No KA-05-N-6558. The said complaint filed by the above said Sri Rangaswamy is registered in Kamakshipalya Police Station, Vijayanagar Circle, Bangalore City in Crime No. 214/ 2002 on 22.06.2002 and it is under investigation.

Further, paragraph-16 of the election petition reads thus:

16. The petitioner submits that the above said complaint, the persons who are accused are (1) Sri Kemparaju son of Mahimerangaiah, No.23, Mahadeswhara Nagar, Herohalli Cross, Bangalore-560091 and (2) Parvathaiah N.G. Son of Gangaiah, No.7/5 Doddanna Industrial Area, working at Deepashree High School, Visvanidham Post, Hegnahalli, Bangalore-560091, who are the supporters of the 1st respondent had the consent of the 1st respondent and at his instance the above said hot case and luxur ball pen was being distributed to the voters of the Bangalore Teachers Constituency. Thus the 1st respondent has committed corrupt practice of bribery. It is submitted that the said hot case and ball pen were distributed to one thousand voters of the Bangalore Teachers Constituency in the Bangalore District and the voters who have received such case have casted their votes in favour of the 1st respondent. Therefore, the petitioner had lost one thousand preferential votes, which he would have got. The list of some of the voters with address who were given the hot cases and luxur ball pens are furnished at Annexure-L."

17. As noticed above, the election petition survives for consideration of the allegation of corrupt practice as averred in paragraphs 15 and 16 of the petition. This does not mean that these paragraphs automatically contain and satisfy the requirements of Section 83 of the Act. No doubt, it is true that this court had occasion to look into the petition avernments once earlier while considering an application for striking out of pleadings and several paragraphs of the election petition have been deleted applying the principles of Order VI Rule 16 of the Code of Civil Procedure. But, passing of such an order does not mean that in respect of the surviving paragraphs of the petition, the test of compliance with the requirements of Section 83 of the Act need not be applied any more. At any rate, in the present case, as the learned counsel for the first respondent having pressed into service this argument viz., the petition not only lacks a concise statement of material facts on which the petitioner relies, but also it does not set forth the full particulars of the corrupt practice that the petitioner has alleged, as contemplated in clause (b) of sub-section (1) of Section 83 of the Act, it becomes necessary for the court to examine this aspect.

18. The sum and substance of the allegation of corrupt practice is that the first respondent had indulged in distributing gift items to the voters as an inducement to vote in his favour and that his supporters also had so distributed the gift items to the voters to solicit their votes, in favour of the first respondent. The gift items are hot cases and ball point pens with the inscription *"with compliments from Puttanna".*

19. In terms of the avernments in paragraph 15 of the election petition, it is stated that the first respondent himself had gone to the residences and the schools of the voters where they were working and distributed the hot cases and ball point pens to the voters. The allegation is that the first respondent accompanied by his supporters had distributed the gift items to the voters. The plea does not indicate to which voters and precisely at which place and at what time, which gift article was given by the first respondent or his supporters. The further part of this paragraph indicates that the first respondent had purchased such gift items at the cost of Rs. 103/- for the Cello brand hot cases and the Luxor ball point

pens for Rs.60/- that even the Party to which the petitioner belongs to had complained this aspect to the Election Commission by way of written complaint.

20. The further plea is that one Sri Rangaswamy had filed a complaint before the Kamakshipalya Police Station on 22.06.2004 complaining of the carrying of hot cases and Luxor ball point pens in a vehicle for being distributed to the teachers who were voters in the constituency and in several places and that the articles were being carried in a Tata Sumo vehicle bearing registration No. KA-05-N-6558. This part of the plea, at best, is one to support the plea of commission of corrupt practice by the supporters of first respondent and does not constitute an independent plea of corrupt practice said to be committed by the first respondent.

21. However, a reading of the contents of paragraph 16 indicates that two persons named in the complaint are the supporters of first respondent and they had the consent of first respondent for the distribution of such gift items to the voters of the constitutency and that this aspect is borne out by the complaint lodged with the Kamakshipalya Police Station on 22.06.2002. Assuming that this plea is to be understood as a plea of allegation of commission of a corrupt practice by the first respondent through his supporters and with his consent, the allegation again lacks full particulars of the act of corrupt practice namely which supporter had the consent of the first respondent to distribute the gift items in favour of which voter, at which time and place. Though the further plea in this paragraph does indicate that the hot cases and ball point pens were distributed to 1000 voters of Bangalore Teachers Constituency in the Bangalore district and the voters had received such gift items for casting their votes in favour of first respondent to the detriment of the petitioner and that a list of some voters with addresses, who were given the gift items is furnished in terms of Annexure-L to the election petition, the plea does not distinguish the voters who had received the gift items from the first respondent and the voters who had received such items from the supporters of the first respondent and with the consent of first respondent. The names and addresses are given in general and not with the plea that at the address given, the voter had received the gift item or which of the two gift items or from whom.

22. It is in this background, Sri G.V. Shantharaju, learned counsel for the first respondent has contended that the petition averments do not conform with the requirements of Section 83(1) (b) of the Act. Submission of Sri Shantharaju is that the plea and the statement of facts in paragraphs 15 and 16 lack three essential ingredients that should constitute a plea of corrupt practice, as laid down by the Supreme Court in the case of ***DAULAT RAM*** [supral], which are: (i) Director and detailed nature of corrupt practice as defined in the Act; (ii) details of every important particular must be stated giving time, place, time and names of persons, use of words and expression etc., and (iii) it must clearly appear from the allegation that the corrupt practice alleged were indulged in by (a) a candidate himself; and (b) his authorized election agent or any other person with his express or implied consent.

23. Though it is ironic that in ***DAULAT RAMs*** case, it was the returned candidate [respondent in the election petition] who had sought to contend that the election petition contains a plea of corrupt practice indulged in by some of the candidates in the election who had withdrawn from the contest and it was the stand of the election petitioner therein that the plea did not amount to allegation of corrupt practice, and the Supreme Court was examining the plea in the light of such controversy as between the election petitioner and the returned candidate, nevertheless, the Supreme Court had occasion to indicate as to what are the essential ingredients that are necessary and should be contained in a plea to constitute an allegation of corrupt practice and the test as indicated therein can apply to any other situation where the plea in the context of allegation of a corrupt practice is being examined. If this test is applied, assuming that the plea is by and large in compliance with the first of the three tests, it definitely fails on the second test viz., details of every important particular with time, place and names of persons etc. The particulars definitely are not specific, but general in nature to support the allegation of distribution of gift items to voters.

24. It is to counter this submission of learned counsel for the first respondent, Sri Shivanand, learned counsel for the petitioner has relied upon the decision of the Supreme Court in the case of ***R. PUTHUNAINAR ATHITHAN vs P.H. PANDIAN [AIR 1996 SC 1599].*** This decision of the Supreme Court while does not show or lay down any law at variance or even to reduce the rigor of the test as laid down in ***DAULAT RAM's*** case, it has to be considered as an authority for the purpose of testing as to what inference can be drawn with regard to the fact in dispute and in what manner can it be said that the fact is proved or established and what degree of proof is required for such purpose. The Supreme Court goes to record that the inference of proof of a fact could be drawn from the given objective facts and

circumstances, which again depends on the nature and quality of supportive evidence. It is indicated that ultimately, it depends on the quality of evidence before the Court if it can inspire the confidence of the Court ot believe a fact as proof or as in existence. This aspect of appreciation of evidence does not touch upon the contents of plea or presence of necessary ingredients in the plea to constitute the allegation of corrupt practice in an election petition.

25. This aspect of the petition pleading containing the full and proper particulars of corrupt practice indulged in by the returned candidate in an election petition for setting aside the election on the ground of commission of corrupt practice by the winning candidate has been noticed by the Supreme Court in several subsequent cases also and two such subsequent decisions can be usefully referred to in this regard.

26. ***SURINDER SINGH vs HARDIAL SINGH [AIR 1985 SC 89 [(1985) 1 SCC 91]*** is one such case, wherein the Supreme Court had occasion to refer to requirements of a specific plea with regard to the allegation of corrupt practice and furnishing of material particulars and in the absence of material particulars, any evidence dehors the plea cannot be permitted, as noticed in paragraph 34 of the decision.

27. The other decision is ***RAM SINGH vs COL. RAM SINGH [AIR 1986 SC 3],*** wherein the Supreme Court had occcasion to examine the aspect of furnishing of full particulars of corrupt practice in an election petition. In that case, though such particulars were furnished, in a subsequent statement of particulars, absence of such particulars as part of the petition was nevertheless taken note of and it was indicated that while that was a relevant factor in judging the truth of the particulars mentioned in the statement, it is also observed that the main part of the petition should necessarily contain some definitive and specific allegation regarding the nature of corrupt practice allegedly committed by the returned candidate or his supports.

28. If these tests are applied, in this case it has to be held that the petition plea is bereft of full particulars of corrupt practice, particularly precise date, place, time and names of persons as one to one while indulging in such corrupt practice.

29. The list of voters in which the names are given at Annexure-L to the petition only indicates that they are voters who have received gifts from first respondent Puttanna. A combined reading of the pleadings of paragraphs 15 and 16 also does not reveal the particular supporter of the first respondent who had distributed particular gift item in favour of particular voter named in Annexure-L. In the complaint lodged at Kamakshipalya police station, which is marked as part of eviddence at Ex.P3, it is only indicated that the occupants of a Tata Sumo vehicle bearing Registration No. KA-05-N-6558 on which was pasted wall posters soliciting votes in favour of first respondent, were distributing hot cases and other items to the voters: that on being questioned, the occupant's of the vehicle tried to assault the complainant C.R. Rangaswamy; that the complainant followed the vehicle and intercepted it near the check-post near Kamakshipalya police station and apprehended the inmates of the vehicle and handed them over to the police along with the vehicle and goods therein and the complainant also informed that the occupants who were indulging in giving iducements to the teacher-voters of the constituency were compelling them to vote in favour of the first respondent and as such suitable action was required to be taken as against them. The petition plea accordingly does not contain the full particulars as are indicated in Section 83 (1) (b) of the Act even in respect of the allegation of indulgence of corrupt practice by the supporters of first respondent with his consent.

30. The parties having gone to trial with such pleadings and evidence having been recorded, it becomes necessary for this court to examine the merits of the case also. However, this can be done by keeping in view the caution administered in the case of ***QUAMARUL ISLAM vs S.K. KANTA [AIR 1994 SC 1733]*** [contained in para-41 of this judgement], particularly, keeping in mind that such evidence which may travel beyond the pleadings has to be eschewed while appreciating the evidence let in by the petitioner in the present case.

31. Petitioner apart from examining himself as PW4, has examined as many as 12 other witnesses and as many as 24 documents-Exp1 to 24- were marked. While evidence of petitioner, who was examined as PW4, is supportive of the petition generally, it cannot constitute evidence to support the plea of allegation of corrupt practice as it is not the version of the petitioner that he was a witness to any incident of actual indulgence of corrupt practice by the first respondent. The allegation of corrupt practice is distribution of gift items such as hot cases and ball point pens.

32. Election petitoner has deposed that the first respondent had visited the residences and schools of the teacher voters and had distributed hot cases and ball point pens to voters requesting them to cast their voters in his favour; that the first respondent had also instructed his followers and supporters namely Kemparaju and Parvathaiah also to distribute hot cases and ball point pens. The petitioner has deposed that while he had not seen them, he came to know about this through some of the voters like Kalahonnaiah, who had told him that he had received ball point pens from Puttanna. Likewise, petitioner deposed that another voter Puttegowda had also shown him the ball point pens received from first respondent Puttanna and those ball point pens had been produced before the court and marked as ExP18 through Puttegowda (PW8), who was at the relevant point of time working as Assistant Master [receipt of the evidence of this witness has been objected to by Sri G.V. Shantharaju, learned counsel for the first respondent, on the ground that the evidence is not supportive of any plea in the petition. The evidence of this witness is therefore subject to a ruling in this regard]. M.E. Puttegowda, PW8, has deposed that he had received ball point pens from Puttanna (first respondent). PW 11 Shankar Prasad, who was working as Head Master, Vidya Priya High School, Laggare, Bangalore, has deposed that the first respondent Puttanna had given ball point pens at the time first respondent had been to their school for the purpose of campaigning to muster support to his candidature in the election. This witness has produced the ballpoint pen and the same was marked as ExP22 [receipt of the evidence of this witness has been objected to by Sri G.V. Shantharaju, learned counsel for the first respondent, on the ground that the evidence is not supportive of any plea in the petition. The evidence of this witness is therefore subject to a ruling in this regard]. Likewise, PW 12, Puttaswamy Gowda, who was working as Head Master at Sri Rajalakshmi High School, Kamalanagar, Bangalore, has deposed that on 22.06.2002, when first respondent had come to their school at 10.30 am, he had informed this witness that first respondent had come to the school to seek support of the teachers to his candidate in the election and that he wanted to meet all other teachers in the school and that this witness called the other teachers and when all of them assembled, first respondent had requested this witness and other teachers to cast their first preferential votes in his favour and at that time, first respondent handed over ball point pens to each of the teachers. This witness had produced a ball point pen that was still with him and the same was marked as ExP23.

33. The names of these three witnesses while do not figure in the original list of witnesses filed on 29.08.2003, names of PWs 12 Puttaswamy Gowda and PW8 Puttegowda, who were working as teachers, figure in the list of 27 names produced at Annexure-L to the petition, but the name of PW 11 Shankar Prasad did not figure in the said list either. None of these witnesses has deposed about either actual giving of any gift items to any teacher nor any other recipients before the court.

34. While the petition averments indicate that two items namely hot cases and ball point pens were distributed as gifts to the voters to induce them to vote in favour of the first respondent, there is no evidence at all with regard to the giving or receiving of any hot cases by any of the witnesses. The factum of seizure of Tata Sumo vehicle with one luxor ball point pen and several hot cases and two bundles of publicity material in favour of first respondent in the election by the Kamakshipalya Police and the complaint lodged as per ExP3 by one of the supporters of the petitioners as also the complaint by the Secretary, Karnataka Pradesh Congress Committee Sri A. Kenche Gowda, addressed to the Chief Election Commissioner New Delhi through the Chief Electoral Officer in Karnataka, Bangalore, as per ExP1 and the complaint to the Kamakshipalya police on 22.06.2002 by Rangaswamy (PW6), seizure mahazar drawn by the police as per ExP4, first information report by the Kamakshipalya police in CC No.9738 of 2002, as per ExP5, information about recording the complaint under Section 171(d) of CrPC and the permission from the jurisdictional court for further investigation in terms of report of Kamakshipalya police dated: 22.06.2002 as per ExP6, spot mahazar at the place of seizure of Tata Sumo vehicle as per ExP7, statement of panch witnesses at ExP8 and 9, property list dated: 22.06.2002 forwarded by the police to the jurisdictional magistrate as per ExP10, charge sheet filed in the said case on 24.08.2002 as per ExP13, which have all been marked through the depositions of relevant witnesses, are all sought to be relied upon as supporting circumstances in the acts of corrupt practice namely distribution of hot cases and ball point pens to the voters by the first respondent. None of these exhibits constitute documentary evidence of actual act of distribution of gifts to the voters by the first respondent or his supporters. It is only sought to the submitted that from the totality of the circumstances, it can be inferred that their evidence is supportive of the evidences of PWs 8, 11 and 12 who deposded that they have actually received the gift items from the first respondent.

35. Unless the probative value of the deposition of PWs 8, 11 and 12 is one that inspires the confidence of the court to accept the same, rest of the materials placed before the court by themselves are of no consequence. Nor does it in any way support the plea of the allegation of corrupt practice. It amounts that bereft of the deposition of PWs 8, 11 and 12, who are themselves guilty of being a party to the corrupt practice viz., receiving of gifts as inducements for voting in favour of first respondent or accepting gift from a candidate in an election for voting in his favour, there is no other material placed by the petitioner to make good the plea of corrupt practice.

36. In this context, Sri G.V. Shantharaju, learned Senior Counsel appearing for the first respondent, has vehemently contended that while the evidence let in is definitely not supported by the plea, even assuming for the sake of argument, but not conceding, that there is sufficient plea to constitute the allegation of corrupt practice in the election petition, the evidence is not either cogent or convincing or one that inspires the confidence of the court to accept the same at its face value. Submission of Sri G.V. Shantharaju is that these witnesses themselves are tainted persons and any statement made by them in the witness box cannot be accepted at its face value, particularly for the purpose of constituting the degree of proof required for proving the allegation of corrupt practice made in the election petition against the winning candidate. Submission of Sri Shantharaju, learned counsel for the first respondent, is that there is an element of risk in accepting their evidence at its face value for a very serious purpose such as setting aside an election with serious adverse consequences on the first respondent and when such witnesses have not come forward to register any complaint against the first respondent as to the alleged act of corrupt practice at any point of time before so deposing before the court in this case i.e., after a lapse of 1 to $1^1/_2$ years after the alleged incident and to the date of their evidence before this court.

37. It is in this background of such petition plea and the evidence let in, the court is required to examine the merit of the submissions on behalf of the learned counsel for the petitioner as well as the first respondent. The first submission of Sri Shivanand, learned counsel for the petitioner, is in the context of the plea particularly with regard to the contents in paragraphs 15 and 16 of the election petition vis-a-vis written statement filed on behalf of the first respondent.

38. Submission of Sri Shivanand, learned counsel for the petitioner is that this court had an occasion to examine the pleadings of the petition once earlier at the instance of the respondent No.1; that applying the principles contained in Order VI Rule 16 of the Code of Civil Procedure, paragraphs 8 to 14 have been struck out; that paragraphs 15 and 16 which have survived this scrutiny and test are relevant paragraphs containing the material facts and particulars of corrupt practices; that the allegation of corrupt practice, namely, the respondent No.1 and his supporters had indulged in distributing gift items like ball point pens and hot cases to the voters to induce them to vote in favour of the respondent No.1 has been specifically averred in these paragraphs; that the respondent No.1 had purchased such items for the purpose of distribution to voters in the election is a specific plea in the paragraphs; that it is specifically averred that such an act amounted to bribery, an act within the meaning of this expression as in Section 123 of the Act; that the petitioner has also furnished the list of voters with addresses who had received such hot cases and luxor ball pens as at Annexure-L to the petition, which constituted particulars of corrupt practice; that if the petition averments as in paragrpahs 15 and 16 contain both material facts as well as particulars of the allegation of corrupt practice, requirements of section 83 of the Act are fully met and there is no question of further application of the principle of Order VI Rule 16 of the Code of Civil Procedure; that when once evidence is let in, in support of such plea and particulars, it cannot be characterized that the evidence is not one which is acceptable for want of a proper plea; that the evidence should neccessarily be looked into as adduced by the petitioner through PW-11 Shankar Prasad, PW-12 Puttaswamygowda and PW-13 M Raveesha who have all spoken that they have received ball point pen from the respondent No.1 and who have all produced the gift item ball point pen before the court marked as Exhibits-P22, P23 and P24 respectively; that the names of two of the witnesses namely, Puttaswamygowda-PW12 and M. Raveesha-PW13 did figure in the list of names contained in Annexure-L to the petition; that it is not as though the respondent No.1 is taken by surprise by examining a person as a witness whose name did not figure at all earlier in the list; that the other circumstances and the evidences of other witnesses and other documents like the incident of seizure of the vehicle Tata Sumo Jeep bearing No KA-05-N-6558 with the gift items and election publicity material in support of the candidature of the respondent No.1, seizure documents, the mahazar, seized articles, the vehicle and the persons in it carrying on the activity of distribution of gift

items to the voters, complaint to the election commission by the office bearers of the party of the petitioner, all constitute supportive evidence to the depositions of the three witnesses, namely, PWs-11, 12 and 13; that the election petitioner has made good the allegation of indulgence in the act of corrupt practice by the respondent No.1; that the evidence is one that is acceptable and therefore election petition deserves to be allowed.

39. It is the further submission of Mr. Shivanand, learned counsel for the petitioner that these witnesses are independent witnesses, they are educated persons who are teachers; that their evidence is natural and truthful; that there is not even a suggestion in the course of the cross examination to impeach their creditworthiness. On the other hand, there is a clear admission on the part of the responent No.1 humself that he himself had visited the schools where these witnesses as also PWs 4 and 8 worked for the purpose of soliciting votes of the teachers in the schools concerned; that there is absolutely no suggestion to any of these witnesses that the gift articles like the ball pen which they stated to have received from the respondent No.1 where not so received but had been given to them by the petitioner himself and requested to come and give such false evidence; that on such evidence, the petitioner has proved the allegation of acts of corrupt practice of bribery committed by the respondent No.1 by distributing the gift items to the voters and as such issue No.1 should be answered in favour of the petitioner.

40. Sri Shivanand, learned counsel for the petitioner, further contends that in spite of the petitioner having discharged initial burden of placing material before the court against the respondent No.1 to prove the act of commission of corrupt practice on the part of the respondent No.1, the respondent No.1 having not taken any steps to rebut the same has not led any evidence in support of his denial; that though the respondent No.1 had entered the witness box and had while tried to blow his own turmpet by elaborating about his qualifications and achievements, points out that so called complaint by the respondent No.1 against the petitioner and the party of the petitioner namely, the Congress Party about any malpractice indulged by them is only as a counter blast to the complaint lodged by the petitioner; that the attempt to produce the copy of the complaint was one without any basis in the absence of a plea; that a mere denial of the allegations in the petition by iteself will not exonerate the respondent No.1 in the absence of rebuttal evidence led by the respondent No.1 to get over the allegation of commission of corrupt practice; that the Exhibit-R1 letter dated: 24.06.2002, complaint said to have been lodged to the Election Commission that persons belonging to the Congress Party are indulging in false propaganda against the respondent No.1 being only the copy of the letter and no effort having been made by the respondent No.1 to secure the original by summoning the competent persons to depsoe before the court and for production of the same; that a mere denial by the respondent No.1 like the denial of an accused person in a criminal case in itself will not exonerate the respondent No.1 of the charges as the petitioner had made good the charge of allegation of corrupt practice by producing necessary material through documentary evidence as well as through direct evidence of the recipients of the gift items; that the respondent No.1 having not chosen to rebut the evidence let in by the petitioner, it amounts to clear admission on the part of the respondent No.1 that he has, in fact, indulged in corrupt practice and as such, it is a clear case warranting petition to be allowed, election of the respondent No.1 to be set aside and the petitioner declared as the elected candidate. Learned counsel for the petitioner, in support of such arguments, placed reliance on the following decisions;

(a) ***R. PUTHUNAINAR ATHITHAN vs P.H. PANDIAN [AIR 1996 SC 1599]***
(b) ***M. CHENNA REDDY vs V. RAMACHANDRA RAO AND ANOTHER [XL ELR 390]***
(c) ***SUSHIL KUMAR vs RAKESH KUMAR [(2003) 8 SCC 673]***
(d) ***SAMANT N. BALAKRISHNA vs GEORGE FERNANDEZ AND OTHERS [AIR 1969 SC 1201]***
(e) ***R.M. SESHADRI vs G.V. PAI [AIR 1969 SC 692]***
(f) ***RAJENDRA PRASAD vs SHEEL BAHDRA YAJEE AND OTHERS [AIR 1967 SC 1445]***
(g) ***GANESH LAL vs STATE OF RAJASTHAN [(2002) 1 SCC 731]***
(h) ***SHEOPAT SINGH vs HARISH CHANDRA [AIR 1960 SC 1217]***
(i) ***HARCHARAN SINGH vs SAJJAN SINGH [AIR 1985 SC 236]***
(j) ***RAMSHARAN YADAV vs THAKUR MUNESHWARNATH SINGH [AIR 1985 SC 24]***
(k) ***BISHWANATH RAI vs SACHHIDANAND SINGH [AIR 1971 SC 1949]***

41. Placing reliance on these decisions and ratio laid down therein submission of Sri Shivanand, learned counsel for the petitioner is that while a mere offer on the part of a candidate constitute an act of corrupt practice, in the present case, there was much more. In fact, the giving of a gift item itself amounts to a bribe as an inducement to cast his vote; that it can definitely be inferred that the respondent No.1 has by himself indulged in an act of corrupt practice by distributing the gift items to the voters; that it can also be inferred that the distribution by his supporters was with the consent and approval of the respondent No.1; that the vehicle in which the seized articles and his supporters were found was the vehicle which was taken on hire by respondent No.1; that the available material on record clearly raises a presumption that the respondent No.1 has indulged in the act alleged against him; that presumption having not at all being rebutte, the respondent No.1 cannot escape from the conclusion that he has indulged in the act of corrupt practice and the petition should succeed.

42. Submission of Sri G.V. Shantharaju, learned Senior Counsel appearing for the respondent No.1, on the other hand, is as discussed earlier, the contents of paragraphs 15 and 16 still lacks material facts as well as full particulars; that mere mention of the names of two of the witnesses in the list at Annexure-L still does not disclose the place, date and the precise gift item given to a particular person and by whom. If this material particulars was not available, the evidence through PWs-11, 12 and 13 cannot at all be looked into or in the absence of a supportive plea and if the evidence of these three witnesses is ignored, the rest of the material which even as admitted by the petitioner himself being in the nature of supportive or corroborative evidence cannot stand by itself and as such it should be held that the election petitioner has miserably failed to prove the allegation of corrupt practice and the petition deserves to be dismissed.

43. Submission of Sri Shantharaju is that mentioning of the giver and receiver of bribe, the actual subject matter bribe is a material fact and if the petition does not by itself give this, it is a clear case of non-fulfillment of requirements of Section 83(1)(a) of the Act as non-mentioning of the place and time of distribution to a particular person is nothing short of not providing full particulars and therefore petition plea even as contained in Paragraphs 15 and 16 fails the test of conformity with the provisions of section 83(1)(a) and 83(1)(b) of the Act. In support of such submission, Sri Shantharaju has relied upon the decision of the Supreme Court in ***DAULAT RAM vs ANAND SHARMA [AIR 1984 SC 621]*** and further points out that while the petitioner's case through PW Nos.8, 11, 12 and 13 is that these witnesses have received gift items from the respondent No.1; that it was not the case of the petitioner that there was a persons who had actually seen the incident but had learnt about the same. But, the petition plea is lacking in these particulars to enable-them to come and depose before the court about this aspect.

44. Further submission of Sri Shantharaju, learned Senior Counsel for respondent No.1 is that though these witnesses were deposing much later after the incident itself and it can be reasonably presumed that the witnesses being educated persons knew that receiving gift items from the candidate for the purpose of casting vote in favour of such candidate amounts to giving of bribe, had nevertheless, not complained at all about the same to anyone at any point of time earlier; that none of the witnesses having complained about the incident clearly casts a serious doubt about the creditworthiness; that in fact, they being part of the offence by receiving bribe are not persons whose evidence that can be accepted at face value nor are persons whose evidence can inspire confidence of the court in support of a serious matter like an allegation of corrupt practice in an election petition; that their testimony only deserves to be rejected even for the reason that it is not creditworthy. While degree of proof in an election petition for proving an allegation of corrupt practice has been consistently held by the Supreme Court could be one of truth beyond reasonable doubt and not mere preponderance of probabilities, in the present case, while the evidence by itself is not one which can be looked into by the court in the absence of a proper plea, if such evidence is one that is suspect coming from persons who are themselves tainted; that it is rather strange that the incident of giving of a gift item by the respondent No.1 and the act of receipt of the gift item by these witnesses namely PWs-8, 11, 12 and 13 is not corroborated by any other person who has witnessed the same though it is claimed that the receipt of the items was either in the school where the teachers were working or at their residence where inevitably there will be other persons and that in itself betrays the hollowness of the claim and the falsity of the deposition.

45. Sri Shantharaju, learned Senior Counsel submits that with such suspect evidence, there is absolutely no possibility of the court giving a finding of the respondent No.1 having indulged in an act of corrupt practice and the petition deserves to be dismissed. It is in this regard, learned counsel for the respondent No.1 has placed reliance on the following decisions, namely,

(a) ***ABDUL HUSSAIN MIR vs SHAMSHUL HUDA [(1975) 4 SCC 533]***

(b) ***SURINDER SINGH vs HARDIAL SINGH AND OTHERS [(1985) 1 SCC 91]***

(c) ***SAMANT N. BALAKRISHNA vs GEORGE FERNANDEZ AND OTHERS [AIR 1969 SC 1201]***

(d) ***SARAT CHANDRA vs KHAGENDRANATH [AIR 1961 SC 934]***

(e) ***THAKUR SEN NEGI vs DEV RAJ NEGI AND ANOTHER [AIR 1994 SC 2526]***

(f) ***RAHIM KHAN vs KHURSHID AHMED [AIR 1975 SC 290]***

(g) ***V. NARAYANASWAMY vs THIRUNAVUKKARASU [AIR 2000 SC 694]***

46. On an examination of the evidence on record, the submissions of the learned counsel and on the touchstone of the principles laid down in the cases referred to above and relied upon by the learned counsel for the petitioner and the respondent No.1, it becomes clear that what remains in petition paragraphs 15 and 16 is that while an allegation of corrupt practice is present in these paragraphs namely that the respondent No.1 has committed an act of bribery by distributing hot cases and ball pens to the voters with an inscription: **"With compliments from Puttanna"** to induce them to vote in favour of the respondent No.1, the question is as to whether the said allegation also satisfies requirements of section 83(1)(a) and 83(1)(b) of the Act notwithstanding the scrutiny once earlier by the court. A close reading of the contents of paragraph-15 indicates that the commission of act of corrupt practice of bribery is only by the respondent No.1 There is no allegation of commission of corrupt practice independently by the supporters of the respondent No.1 though it is pleaded that the respondent No.1 along with his supporters where they were working and while soliciting their votes had distributed hot cases and ball pens to the voters, it inevitably amounts that the respondent No.1 was present with his supporters visited the schools of the teachers in which event the distribution is by the respondent No.1 and not by his supporters. If the allegation is confined to the act of bribery on the part of the respondent No.1, all other descriptions, evidence, documents, depositions etc., not relating to an act of bribery on the part of the respondent No.1 himself clearly goes out of consideration. In this view of the matter, it is no more necessary to give a ruling on the objections raised by the learned counsel for the respondents at the time of recording of the evidence of certain witnesses to the effect that the evidence is not supportive of any plea in the petition and therefore should not be looked into, raised in the context of recording of the evidence of the particular witnesses.

47. In so far as the act of bribery on the part of the respondent No.1 is concerned, the petition averments is also lacking in material facts about the exact place and time of distribution of the gift items. The plea is one in general such as the respondent No.1 and his supporters had been to the residence and the schools of the voters where they were working in the morning or in the evening and during the working hours of the school and distributed hot cases, ball pens to the voters etc., A plea of this nature can encompass the entire constituency and the entire electorate. While such is the plea, no further particulars are forthcoming to amplify this limited plea either. A particular gift item to a particular person, place and time is not pleaded at all.

48. While such is the position of the contents of the petition, the evidence through PW Nos.-8, 11, 12 and 13 in the absence of a supporting plea becomes useless. It is the well established law in considering an election petition that particulars of corrupt practice should be available in the petition and if available it can be made good by supportive evidence. If particulars are lacking in the petition itself, supportive evidence is not one which can be looked into. While the evidence of PW Nos.8, 11, 12 and 13 could have been generally characterized as evidence based on a general plea in any other type of civil proceedings, in an election petition, particularly, in the light of the requirements of section 83(1)(b) of the Act, the evidence in my view is not one which is supportive of a plea of full particulars of an allegation of corrupt practice in an election petition and as such cannot be looked into at all.

49. Even assuming for argument sake, such evidence can be examined by the court, even then the evidence is not one that inspires the confidence of the court, particularly, coming from persons who are themselves party to the offence of accepting bribe, being persons who had kept silent about the act of bribery committed by the respondent No.1 in the absence of any complaint by these witnesses to any competent authority and while all the witnesses have uniformly said that they have received only ball point pens, none any hot cases, the incident of receipt of this ball point pen being not supported by examining any other person who could have witnessed the incident as the act of giving a ball point pen is said to have taken place where all others were present is a further suspicious circumstance to accept the evidence at its face value. At any rate, the evidence is not one which inspires the confidence of the court, particularly,

as the evidence of such quality or of such accuracy for the purpose of rendering a finding of an act of corrupt practice on the part of the respondent No.1, a finding which can be recorded after serious consideration of the material on record and only when the court is fully satisfied that the evidence is one that can be accepted, the evidence does not inspire the confidence of the court to accept at its face value. When once the evidence itself is not one that inspires the confidence of the court to accept it, further question of the respondent No.1 not leading any rebuttal evidence does not arise.

50. It is no doubt true that if not hot cases, at least, ball point pens were found freely flying around during the election period. Added to this, it carried the inscription: "With compliments from Puttanna" and some of them have come before the court also. While the hot cases remained mute spectators, in the sense that, it is not the version of the petitioner that it had changed hands, the ball point pens is alleged to have been given by the respondent No.1 to some of the witnesses who deposed before the court. Even if any one of this ball point pen can stick to the respondent No.1, in the sense that, the respondent No.1 has given it to any voter for the purpose of inducing him to vote in his favour, that amounts to an act of bribery and an act of corrupt practice.

51. While it is true that indulgence in acts of corrupt practice is quite rampant, has become a matter of course and routine by the candidates in elections and no election is fought on principles of adhering to the requirements of law, we have not yet reached a stage where courts can take judicial notice of such indulgence for the purpose of deciding an election petition. In fact, the law is otherwise; that until and unless an allegation of corrupt practice is proved beyond reasonable doubt, it cannot be held so by the court in the context of an election petition for setting aside an election for the reason that winning candidate has indulged in an act of corrupt practice. Unfortunately for the petitioner, the petitioner has not been successful in ensuring that at least one of the ballpoint pen was able to stick to the respondent No.1 to affect his success in the election. An Election Petition before the Election Tribunal under the Act is a serious matter. More so, an allegation of corrupt practice said to have been indulged in on the part of a candidate who has been declared the winner in the election. Petition should contain proper and necessary pleas to make good an election petition as contemplated under the provisions of the Act. A casual, insufficient, inadequate plea does not take the petitioner anywhere. In the absence of proper pleas, while no progress will be achieved, even when necessary pleas are present, it should be made good by cogent, convincing and clinching evidence placed before the court by the petitioner in support of such pleas. It is not because of any carelessness or negligence or even blurred admissions on the part of a respondent that an election petition can succeed, but only by the diligence of the petitioner in reconstructing the events before the court to demonstrate the existence of an act of corrupt practice on the part of the winning candidate that can ensure success in an election petition! If the election petitioner had achieved this, perhaps the respondent No.1 could have seen his waterloo. But, as observed earlier, the election petitioner is not successful in his efforts. Necessary seriousness and requirements with the provisions of the Act are not met and it is therefore the petition fails. If is more like a person charged of an offence in a criminal case being acquitted and going scot-free because of the prosecution's inept and incompetent handling of the case and not making good the charges before the court. Situation is more or less similar in this petition also.

52. In the absence of such success on the part of the petitioner, it is inevitable that issue No.1 should be answered against the petitioner and in favour of the respondent No.1. The second issue automatically goes against the petitioner as I have found that the petition does not even contain a precise plea that supporters of the respondent No.1 had by themselves indulged in any act of corrupt practice. Issue No.3 does not arise for consideration in the light of the answers to issue Nos. 1 and 2 having gone against the petitioner.

53. In the result, this Election petition is dismissed. However, though normally cost follows the result, in this case, parties are left to bear their own costs.

Sd/-
Judge
By Order,

PR-1

TAPAS KUMAR
Secretary,
ELECTION COMMISSION OF INDIA.

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001
NOTIFICATION
ಸಿ.ಆ.ಸು.ಇ.4 ಚತಕಂ 5, ದಿನಾಂಕ:20ನೇ ಜನವರಿ, 2006

Dated: 13th January, 2006
23rd Pausa, 1927 (Saka)

NOTIFICATION

No.82/ KT-LA/(6/2004)/2005- In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement/ Order of the High Court of Karnataka. Bangalore dated: 09.12.2005 in Election Petition No.6 of 2004.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
Dated this the 9th day of December, 2005
BEFORE:
THE HON'BLE MR JUSTICE V. GOPALA GOWDA
Election Petition No.6 of 2002

Between:

Shivalingappa Patil Naribol
S/o. Channabasappa Patil
Aged: 55 years,
R/o H.O. Naribol, Tq:Jewargi, District: Gulbarga. ....Petitioner
(By Smt. Prameela M.N. Sr.Adv. For Ms. Geetha Menon, Adv.)

And:

Dharam Singh
S/o. Narayanan Singh, Aged: 66 Years, R/o. N.V. Layout,
S.B. Temple Road, District: Gulbarga. ....Respondent
(By Sri D.N. Nanjuda Reddy, Adv.)

This Election petition is filed under Sec.81 of the representation of people's Act, 1951 praying to declare that the declaration of the result of respondent to the 15- Jewargi Assembly constituency is null and void and to declare that the respondent has committed the corrupt practices under Section 123 (1)(A), 123(3-A), 123(4), 123(6) and 123(7) read with S.100(1)(b) of the RP Act, 1951 and Etc.,

This Election petition coming on for further orders this day, The Court made the following:

ORDER

Heard Smt. Pramila M.N., Sr.Adv. for deceased petitioner and Sri D.N. Nanjunda Reddy, Sr. Advocate for respondent.

2. This Court, vide order dated: 25.02.2005 on the memo filed by the respondent reporting the death of sole petitioner along with death certificate issued by the competent authority, ordered to publish the notification as required under Sec. 112(2) & (3) of the Representation of People's Act, 1951 (in short the Act) notifying the death of sole petitioner who has filed this election petition against the respondent.

3. Pursuant to the said order, the notification is published in the Karnataka Gazette Dated: 07.04.2005 in Part-III at pages 475 and 476. As per office note dated 09.12.2005, no application has been filed by any person to substitute himself in place of deceased petitioner so far.

4. Since the sole petitioner died during the pendency of this Election petition and despite Gazette notification no person has come forward to substitute himself in place of the petitioner, this election petition stands abated. Hence, it is liable to be dismissed.

5. Accordingly, the Election Petition is dismissed as abated. Office is directed to refund the security deposit made by the deceased petitioner in this petition as provided under the provisions of the Act and the Rules.

By Order,
TAPAS KUMAR
Secretary,
ELECTION COMMISSION OF INDIA.

PR-8

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

Dated: 13th January, 2006
23rd Pausa, 1927 (Saka)

NOTIFICATION

No.82/ KT-HP/(14/2004)/2005- In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order of the High Court of Karnataka. Bangalore dated: 03.03.2005 in Election Petition No.14 of 2004.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
Dated this the 3rd day of March, 2005
BEFORE:
THE HON'BLE MR JUSTICE N. KUMAR
Election Petition No.14 of 2004

Between:

Sri Raja Madan Gopala Nayak,
S/o Late Sri Raja Venkatappa Nayak,
Aged: about 53 years,
R/o. at Near Sharada Printing Press,
Gopal Swamy Temple Road,
Shorapur, Tq:Shorapur-585224,
District: Gulbarga. ....Petitioner
(By Sri. G.S. Visweswara, Senior Counsel for Sri Aravind Kumar, Advocate)

And:

1. Sri Venkatesh Naik
S/o. Balwantharaya,
Aged about 66 years,
5/34, Arkere Post, Taluk: Dev Durga,
District: Raichur.
2. Sri Kallur Suresh Reddy,
S/o. Bojana Gowda,
Aged: 53 years,
H.No.2-1-26, Androon Khilla, Raichur.
3. Sri B. Basalingappa,
S/o Basappa,
Aged: 28 years, C.P.I. (ML) Red Flag,
12/11/32, Arab Mohalla Circle,
Raichur ....Respondent

(By Sri B.C. Muddappa and Sharanappa,
Mattur, Advocate for R1; Respondent-2 dead; Respondent-3 served;)

This Election Petition filed under Section 81 of R.P. Act, 1951, praying to declare that the declaration of election of 1st respondent as contained in Annexure-A declaring the 1st respondent as duly elected from 3- Raichur parliamentary constitutency as null and void as per Section 100 (d) (iii) and (iv) of R.P. Act, 1951 as null and void, etc.,

This Election Petition coming on for orders this day, the Court made the following:

ORDER

The petitioner, an unsuccessful candidate, has challenged in this Election Petition the election of the first respondent, the Returned Candidate, to No.3 Raichur Parliamentary Constituency in the elections held to the Parliament in April, 2004.

2. The Election to the 14th Loksabha was held on 20.04.2004. The calendar of events for the election was published on 24.03.2004 as per Annexure-A. 31.03.2004 was the last date for filing the nomination paper. The date fixed for scrutiny of the nomination papers was 02.04.2004. Repolling was ordered on the ground of failure of electronic voting machines on 22.04.2004 in four polling stations namely 119, 104, 17 and 51 at Kasaba Lingasagur GHPS Khanpur, Haranagera and Dharshanapur, respectively.

3. The petitioner contested on Janatha Dal (Secular) party ticket. The first respondent contested from Indian National Congress, 2nd respondent contested from Bharathiya Janata Party ticket and the third respondent contested as independent, to No.3 Raichur Parliamentary Constituency (for short hereinafter referred to "Raichur Cosntituency") comprisint of eight assembly segments and they are No.17-Yadgir, 18-Shahapur, 19-Shorapur, 20-Deodurga, 21-Raichur, 22-Kalmala, 23-Manvi and 24-Lingsagur.

4. In pursuance of the claendar of events elections were held to Raichur Constituency. The counting of votes polled took place at L.V.D. College on 13.05.2004. The Result of the election was declared on 13.05.2004. The first respondent was declared duly elected as per From No.21-C, Annexure-D by margin of 508 votes. Before announcement of the results the petitioner demanded recounting of votes as per Annexure-N, which was rejected as per Annexure-P. Aggrieved by the same, the petitioner has preferred this Election Petition.

5. Broadly, the petitioner challenges this election on three grounds. First ground is regarding illegality committed in counting of postal ballots. In paragraph 9 of the Election Petition it is stated that the petitioner and his election agents were very much present at the counting venue at the time specified for counting. The postal ballot papers had to be taken first for counting. The candidate and his election agents were supervising the seating arrangements of their agents in the assembly segments. The Returning Officer (for short hereinafter referred to as 'R.O.') without announcing that the actual counting of postal ballot papers would start had commenced the counting of postal ballot. There were 1017 ballot papers and 653 ballot papers were rejected without assigning proper reasons. The rejection of postal ballot papers were improper and wrongful. This 653 wrongful rejection of ballot papers has materially affected the results of election. If these votes are properly accepted and taken into account, it would come to the petitioner and votes that had come to the petitioner are wrongfully rejected. In paragraph 10 of the petition it is stated that the R.O. has not assigned the reasons as required under Rule 54-A of the Conduct of Election Rules, 1961, (for short hereinafter referred to as the 'Rules'). Out of 364 votes taken into consideration for counting under postal ballots, 128 votes have been polled in favour of the petitioner, i.e., 35%. If the 4th respondent had opened and counted the postal ballots in accordance with Rule 54-A of the Rules, the petitioner would have secured at least 40% i.e., about 260 votes from out of the rejected votes. Non-counting of the postal ballots numbering 653 votes has resulted in materially affecting the result of the election.

6. The second ground urged is, improper allocation of votes in Form No.20. It is alleged that the final result sheet was compiled by the Assistant Returning Officer, (for short hereinafter referred to as 'ARO') of parliamentary constituency who is also the R.O. of Yadgir Assembly Constituency. While doing so, there has been improper allocation of votes to the candidate than what they have secured. As per Annexure-F the petitioner has secured 117 votes and respondents-1 to 3 have secured 244, 66 and 25 votes respectively. However, while entering the Final Result Sheet in Form 20 the A.R.O. has not entered the votes according to Form No.17-C supplied/ forwarded by the counting supervisor. The final result sheet Form No.20 i.e., certified true copy pertaining to Raichur Constituency in respect of 17-Yadgir Assembly segment as per Annexure-G shows that the votes allotted to the petitioner is 15 and respondents 1 to 3 are 147, 178 and 6 votes respectively. According to the voter Turnout report the total voters turned out for polling was 452 as rightly entered in Form No.17-C and not 346 as entered in Form No.20. Thus, there has been violation of Rule 56-C which has materially affected the petitioner being declared as duly elected.

7. The third ground on which the election is assailed is regarding glaring discrepancies in the figures mentioned in the voters turn out report when compared to Form 20, the result sheet. In respect of this ground it is alleged that on comparison with the voters turn out report of the Raichur Constituency in respect of all the eight assembly segments which are produced as Annexure-C to C-6, Annexures-H to H-102 with Form 20 produced as Annexure-J, J-1 to J-7, the A.R.O. have erroneously entered the total number of valid votes, in as much as, the actual voter turn out report submitted by the A.R.O's is contrary to one entered in Form 17-C and Form 20. In fact, in the petition, in a tabular column the Polling Station numbers, name of the Polling Station, voter turn out as per voter turn out report showing the number of men and women who voted in the election and the figures found in Form 17-C as well as the figures found in From 20 and for each assembly segment, the particulars of discrepancies found have been tabulated.

Replying on the said discrepancies, the petitioner contends that there has been large scale violation of Rule 56-C and the same has resulted in materially affecting the final result and also materially affected the petitioner from being duly elected to Raichur Constituency. It is asserted that the counting supervisors and the A.R.O. have not complied with the provision of Representation of People Act (for short, hereinafter referred to as the 'Act'), Rules and also the order and directions issued by the Election Commission of India in exercise of power under Article 324 of the Constitution of India, resulting in non-compliance of the same.

8. It is contended by the petitioner that, when the results were declared the petitioner was handicapped with non-availability of the minute details as narrated in the election petition, though prima facie he was satisfied that large scale variation of votes during the counting had been taken place. The petitioner's representation seeking for recounting has been rejected by the 5th respondent and therefore, the petitioner has approached this Court for a declaration that the election of the first respondent declaring him as duly elected from Raichur Constituency is null and void as per Section 100 (d) (iii) and (iv) of the Act. Further, it is prayed that the petitioner be declared as duly elected in the aforesaid election or in the alternative for a direction for recounting of the votes including the postal ballots.

9. After service of notice the first respondent entered appearance through his Counsel. He has filed detailed written statement controverting all the allegations made in the election petition. However, on 03.02.2004 it was reported that the second respondent is dead. Though the third respondent has been duly served, he has remained absent.

10. In the written statement, the first respondent has clearly set out the procedure which is followed from the moment the voter enters the polling station till he comes out of the polling station. He contends neither the marked copy of the Electoral Roll nor Voters Turn Out Report prepared on the basis of the marked Electoral Roll reflect the actual casting of votes but it only reflect the number of voters turned out to cast their vote. Voters Turn Out report and the Accounts of Votes Recorded relate to pre-counting stages. The petitioner by comparing the number recorded in Voters Turn Out Report, men and women wise, with that of the number of votes elicited during counting process by pressing the Result button and the entry made in the Results Form No.20 has alleged that there is large scale violation in allocating the votes to each of the contesting candidates. This ground urged by the petitioner is misconceived and in fact the petitioner has made a misleading statement.

11. The respondents contend that the above election petition filed by the petitioner is incomplete and its presentation does not satisfy the requirement of Section 81 and 82 of the Act. The allegation of improper reception, refusal or rejection of any vote and non-compliance of the provisions of the Act, Rules and certain provisions of the Constitution as the grounds urged for the relief sought is against the R.O. and the relief sought is based on the action or inaction of the said R.O. who could either rebut or justify the same. Thus the lis as could be seen from the pleadings is against the R.O. and in the absence of he being made a party, contentious issues raised cannot be determined. The R.O. has not been made party to the above election petition and therefore the petition is bad in law for non-joinder of necessary parties. As such, it is liable to be dismissed as contemplated under Section 86(1) of the Act.

12. It is further contended that the election petition is bereft of any merit. The petitioner has not made out any ground as to how the result of the election has been materially affected. The petitioner has not pleaded anywhere in the election petition that the rejected postal ballots numbering 653 were valid votes. The petitioner's assertion that there is certain increase or decrease in the votes recorded and allocated in the result sheet has not in any way affected the result of the election with which this respondent has been declared as elected. The petitioner's plea that the counting supervisor and the A.R.O. concerned have erroneously entered the total number of valid votes, is based on the entries made in the Voter Turnout Report which do not reflect the actual casting of votes by the voter and therefore this plea has no substance. The plea that there has been a large scale violation of Rule 56-C of the Rules and the counting supervisors-A.R.Os have not complied with the provisions of Act, the orders and directions issued hereunder is vague, ambiguous and uncertain. As a matter of fact, the respondents should have been declared as elected with 523 votes instead of 508 votes.

13. The petitioner and his counting agents were very much present at the counting venue much earlier to the time specified for counting. It is also true that the procedure requires that the postal ballots had to be taken first for counting. He has denied the allegation the R.O. without announcing the actual counting of the postal ballots papers commenced the counting of postal ballots and rejected 653 postal ballots without assigning proper reasons. The allegation that if these 653 postal ballots had been properly accepted and taken into account, a substantial portion of the said votes would have come to the petitioner, is wrong. The assertion of the petitioner is based on a fertile thinking and speculation and therefore it has no substance. The petitioner is a veteran of many elections and known the requirements of postal ballots. The petitioner has not pleaded that the said rejected postal ballots are valid. No factual foundation is laid in the petition with material particulars of alleged errors or mistake, if any, in rejecting the postal ballots. No objection whatsoever has been raised during the counting and no irregularity, if any, in rejecting the said postal ballots has been brought to the notice of the R.O. Even none of the other contesting candidates other than the petitioner, who too have secured substantial votes have questioned the correctness of the rejection of 653 postal ballots. Even the application dated 1305.2004 requesting for recounting do not contain that the said rejected postal ballots were/ are valid and are in favour of the petitioner. The allegations in this regard are vague and the petition does not contain any adequate statement of the material facts. The petitioner has pleaded this ground with the object of having a fishing enquiry. The petitioner's request was rightly rejected and the same has not materially affected the result of the election. The petitioner has falsely alleged that the R.O. has not assigned any reasons for rejecting postal ballots as contemplated under Section 54(A) of the Rules. This plea of the petitioner is self contradictory, since the petitioner admits assigning reasons for rejection in paragraph 9 of the petition. The contention of the petitioner that he could have secured 260 votes out of the said postal ballots is a mere speculation. He has not raised any objection either during counting or soon thereafter when he had occasion to object and has not laid any factual foundation as to the irregularity or illegality if any in rejecting the said postal ballots. The rejection of the said postal ballots as invalid by the R.O. is for want of compliance of Rule 54-A. Summoning of the said rejected postal ballots for inspection is not a matter of right. Material facts on the basis of which the petitioner asserts that there is improper rejection of the said postal ballots are not pleaded in the petition. Infirmity in the said rejected postal ballots has also not been denied.

14. Annexure-F produced and relied by the petitioner at page 162 of the petition indicates that it relates to booth No.71 of 17 Yagir Assembly Segment and it shows that the petitioner has secured 117 votes and whereas the first respondent has secured 244 votes. Annexure-H-11 produced and relied on by the petitioner in Form 17-C part-II relating to Polling Station No.101 of 17 Yadgir Assembly Segment indicates that the petitioner has secured 127 votes and the total votes polled are 501. Annexure-J is the Final Result Sheet relating to 17-Yadgir Assembly Segment and at page 386 of the petition relating Polling Station No.101 the votes allocated to the petitioner are 147 instead of 127 which are recorded in his favour and the total valid votes recorded is shown 521 instead of 501. Thus, there is excess allocation of 20 votes in favour of the petitioner. In view of this admitted pleading of the petitioner, this respondent should have been declared elected with 523 votes instead of 508 votes. Therefore, there is no substance in the contention of the petitioner.

15. The allegation in the petition that the petitioner was handicapped with non-availability of the minute details as to the large scale variation of votes during the counting is false and baseless. The petitioner was very well present through out the counting right from the beginning to end and was ably assisted by his trusted and experienced counting agents and knowing fully well he did not object for the validity of the counting process. It appears that the petitioner has been tempted to present this petition on a baseless allegations looking to the meager margin with which the results of the election has been declared. This Election Petition filed by the petitioner stems from malafide. The grounds urged in support of the relief prayed prima facie are not in conformity with the Rules governing the polling and the counting process. Therefore, he has prayed for dismissal of the write petition.

16. On the aforesaid pleadings, on 10.12.2004 the following issues have been framed:

(1) Whether the petitioner proves that out of 1017 postal ballot papers 653 ballot papers were not counted at all and they have been rejected without assigning proper reasons as required under

Rule 54-A of the conduct of Election Rules 1961 and thus it has materially affected the result of the petitioner?

(2) *Whether the petitioner proves that the counting of votes in respect of Polling Station Nos.71 and 101 of 17-Yadgir Assembly Segment is in violation of Section 56-C of the Election Rules in as much as there is a discrepancy in the votes entered in Part-II of Form-17C and in Form-20 which has materially affected the election of the petitioner?*

(3) *Whether the petitioner proves that because in Form No.20 and 17-C Part-II less number of voters as shown to have voted than what is mentioned in the Voter Turn Out Report it has materially affected the election of the petitioner?*

(4) *Whether the Election Petition is bad for non-joinder of necessary parties in as much as not making the Returning Officer as party to the proceedings?*

(5) *What order?*

17. Parties filed the list of witnesses and have produced documents. The petitioner examined himself as P.W.1, he examined G.N. Nayak the R.O. as P.W.-2, D.P., Chawan, the A.R.O. as P.W.-3 and Kashinath Gokhale the R.O. of No.17, Yadgir Assembly Segment as P.W.-4. He has marked Exs.P-1 to P-31.

18. On behalf of respondents, first respondent examined himself as R.W.-1 and his election agent Parasmal Sukhani has been examined as R.W.-2. He has marked documents at Ex.R-1 to Ex-R-6.

19. The first respondent had filed an application I.A.No.1/05 seeking leave of the Court to produce documents and the same was allowed on 03.02.2005 subject to admissibility and proof. The petitioner filed I.A.II/05 for summoning the documents from the R.O. Subsequently, he filed a memo for not pressing the said application. Accordingly, it was rejected. Thereafter he filed I.A.No.III/05 for summoning the documents from the Deputy Commissioner, Raichur. The said application was opposed by the first respondent. The documents sought to be summoned were Voter Turn Out Report, i.e., Form No.17-A pertaining to entire Parliamentary Constituency, Form 17-C pertaining to Polling Station 71 of 17-Yadgir Assembly Segment, Form 20 in respect of the entire Parliamentary Constituency and Form 17-A of the entire Parliamentary Constituency. As the petitioner has produced certified copies of these documents, they are not disputed by the first respondent and in the course of evidence they were all marked the Court felt that there was no necessity to summon the originals and therefore, the said request was rejected.

20. The petitioner has sought for summoning of all postal ballots received in respect of the Parliamentary constituency. The said request was rejected on the ground that if those ballot papers had been summoned for the purpose of Court looking into the same to find out whether the R.O. was justified in rejecting the declaration form, virtually it amounts to ordering of recounting even before enquiry. Therefore, it was held that the said application is premature and after the entire enquiry if a case for summoning the said document is made out, the request of the petitioner would be considered. With the said observations the application was also rejected.

21. After the conclusion of the trial, the learned Counsel appearing for the petitioner and the first respondent have submitted their arguments.

22. Sri G.S. Vishweshwara, learned Senior Counsel appearing for the petitioner submitted as under:

23. The counting of postal ballot papers was contrary to Rule 54-A of the Rules and also the orders, directions issued and also as contained in the instructions given in the hand book for Returning Officers. Under the rules the postal ballot papers shall be dealt with by the R.O. first, before the R.O. deals with the other ballot papers. The postal ballot papers and other ballot papers cannot be simultaneously counted. In the instant case, there was simultaneous counting of postal ballots and other ballot papers which is contrary to the Rules, Guidelines and the orders. As such, the said illegality has materially affected the election results.

24. Secondly, he contended that the petitioner could not be present at the commencement of the counting of postal ballot papers because he was not duly informed. In his absence as against 1017 postal ballots papers, 653 postal ballots have been rejected as invalid. Having regard to the margin of votes with which the first respondent has returned in the election namely 508, this 653 votes which were rejected as invalid would materially affect the result of the returning candidate.

25. Thirdly he contended that the entries made in paragraph 11 of Form 17-C in respect of Polling Station 71 as evidenced by Ex.P-16 and P-17 clearly shows that there is discrepancies in the votes allotted to the petitioner and the respondent. Though in Form 17-C, the petitioner is shown to have secured 117 votes, while making corresponding entry in Ex.P-17, i.e., the result sheet, he is shown to have secured 15 votes, thus the petitioner has been denied 102 votes. The said wrong allocation of votes has materially affected the election.

26. In respect of Issue No.3 it was contended that in the election petition and in the affidavit filed in examination in chief as that of the petitioner, the particulars of the number of votes shown in the Voter Turnout Report, Form 17-C and Form 20 are mentioned. On bare comparison of the facts recorded in the Voter Turnout Report when compared with the votes recorded in Form 17-C and Form 20 shows that nearly 336 votes have not been taken into account at all. There is violation of the Rules, instructions contained in the hand book issued to the R.O. and orders of the Election Commission and therefore a case for setting aside of election is made out under Section 100(b)(iv) of the Act. In support of their contention he has also relied on several judgements.

27. Lastly, it was contended that as is clear from Section 82 of the Act, which clearly defines who should be the parties in an election petition, the contention of respondent that non-joinder of R.O. renders the petition bad for non-joinder of necessary parties is without any basis. Therefore, he submits that petition is maintainable.

28. Per co4ntra, the learned Counsel for the respondent Sri Muddappa contended that a reading of the entire election petition shows that the grievance of the petitioner is not against the first respondent but is against the R.O., A.R.O. and the Counting Supervisors. The R.O. is a necessary party to the proceedings and he being not made a party, the petition is liable to be dismissed on the ground of non-joinder of necessary parties.

29. He submits that the law mandates that the postal ballot papers have to be counted first. It is because, unlike other votes, even after the polling date the R.O. receives the postal ballots. Therefore, the law prescribes a dead line, i.e., all postal ballots received till the commencement of the counting have to be taken into consideration and any votes received after the commencement of the voting are to be kept in a separate cover and rejected as invalid votes. That does not necessarily follow that other votes should not be counted along with the postal ballots or that other votes have to be counted only after completion of the postal ballots. The relevant rules and the Act do not indicate any such intention on the part of the legislation. Therefore, he submits that on that ground, the election cannot be set aside.

30. Further he submits that it is not the case pleaded by the petitioner. The plea as it stands, the grievance of the petitioner is that the R.O. without information had started counting of votes and therefore he was unable to be present and in his absence 653 votes have been wrongly rejected. In the election petition the petitioner has not given particulars such as the number of ballot, the name of the person who has sent the ballot, wrong reasons assigned by the R.O. for rejecting that ballot or the declaration form. In the absence of concise statement containing these material particulars, the plea is very vague and on that ground itself, the petition is liable to be rejected. Even otherwise, there is absolutely no evidence adduced before the Court to substantiate the charges of illegal rejection of the votes and nothing is demonstrated to show that the reasons given for rejecting the postal ballots is not in accordance with law. The evidence on record clearly demonstrates that at 8 A.M. on the counting day the R.O. started counting of postal ballots. Thus the mandatory requirement contained in Rule 54-A is complied.

31. In so far as the discrepancies found in Ex.P-16 and P-17 pertaining to Polling Station 71, it was contended that it is true that when the petitioner is shown to have secured 117 votes in Ex.P-16, in Ex.P-17 the result sheet-Form 20 an entry is made showing only 15 votes as against 117 votes secured by the petitioner, 102 votes is denied to the petitioner. He submits that Ex.P-16 in respect of the first respondent shows that 244 votes is secured by the first respondent whereas the votes entered in Ex.P-17 is only 147, thus, he also has been denied 97 votes and if there is any difference, it is only five votes which do not materially affect the election in any manner. In this context, he has pointed out that in respect of the Polling Station 101 the petitioner has secured only 127 votes as is clear from Part-II of Form 17-C, in the result sheet Form 20 he has been allocated 147 votes, thus 20 votes more than what he is legitimately

entitled to. In fact that 20 votes are to be reduced from the votes secured by the petitioner, the margin of difference between the petitioner and the respondents would get increased. Thus, instead of 508 votes, he would have won the election by 528 votes.

32. In respect of issue No.3, it is contended that the contention of the petitioner is based on the discrepancies between the Voter Turnout Report and the entries made in Part-II of Form 17-C and 20. In the entire scheme, under the Act, Rules, guidelines the entries in Voter Turnout Report is not recognized. That is the report maintained in each polling station only to show the number of persons who entered the polling station and out of them how many are men and how many are women and in the end of the day statistics are taken for the purpose of informing the Election Commission, Press, the media and it has absolutely no relevance in so far as the votes secured by the candidates in the election is concerned. What is of importance is the entry made in Part-II of Form 17-C which is the entry made on the date of counting in the presence of counting agents of the parties after viewing the electronic voting machine where the total number of votes held and the number of votes held by each candidate is displayed and entered in Part II of Form 17-C. The said figures are carried over to Form 20 the Result Sheet on the basis of which the elections are announced. Admittedly, in this case, except for one Polling Station, there is absolutely no discrepancy between the entires found in Part-II of Form 17-C and Form 20 and therefore the case sought to be made out by the petitioner is only imaginary and is without any substance.

33. It was also contended that when the petitioner made a request for recounting, he has not whispered anything about the illegality in respect of counting of postal ballots nor any discrepancy in the Voter Turnout Report and the entires made in Form 17-C. One the contrary, his grievance was having regard to the narrow margin of victory he wants the recounting done. Therefore, he submits that there is no substance in any of the contentions urged by the petitioner in this petition and it is liable to be rejected.

34. In order to appreciate these contentions and to answer issues No.1 to 3, in particular it is necessary to have a look at the relevant provisions of the Act, Rules and the hand book for Returning Officers and the decisions on the point.

35. Section 83 of the Act deals with the pleadings in election petition. It states that, an election petition shall contain a concise statement of the material facts on which the petitioner relies and shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The said pleadings have to be signed in the manner prescribed under the Code of Civil Procedure.

36. Section 94 of the Act deals with secrecy of voting not to be infringed. No witness or other persons shall be required to state for whom he has voted at an election.

37. Section 100 deals with grounds for declaring elections to be void. Section 100(d) states, subject to the provisions of sub-section (2) if the High Court is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected by the improper acceptance of any nomination, or by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

38. In so far as counting of votes in respect of postal ballot papers is concerned, the procedure prescribed under law is stipulated under Rule 54A. The said provisions mandates that the R.O. shall first deal with the postal ballot papers in the manner provided under the Rules. It provides that, no cover in Form 13-C received by the R.O. after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted. The other covers shall be opened one after another and as each cover is opened, the R.O. shall first scrutinize the declaration in Form 13-A contained therein. If the said declaration is not found, or has not been duly signed and attested, or is otherwise substantially defective, or if the serial number of the ballot paper as entered in it differs from the serial number endorsed on the cover in Form 13-B, that cover shall not be opened, and after making an appropriate endorsement thereon, the R.O. shall reject the ballot paper therein contained. Each cover so endorsed and the

declaration received with it shall be replaced in the cover in Form 13-C and all such covers in Form 13-C shall be kept in a separate packet which shall be sealed and on which shall be recorded in name of the constituency, the date of counting and a brief description of its content. The R.O. shall then place all the declarations in Form 13-A which he has found to be in order in a separate packet which shall be sealed before any cover in Form 13-B is opened and on which shall be recorded the particulars referred to in sub-rule (5). The covers in Form 13-B not already dealt with under the foregoing provisions of this rule shall then be opened one after another and the R.O. shall scrutinize each ballot paper and decide the validity of the vote recorded thereon. A postal ballot paper shall be rejected- (1) if it bears any mark other than the mark to record the vote or writing by which the elector can be identified; or (aa) if no... is recorded thereon; or (b) if votes are given on it in favour of more candidates than one; or (c) if it is a suprious ballot paper; or (d) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established; or (e) if it is not returned in the cover sent along with it to the elector by the R.O. A vote recorded on a postal ballot paper shall be rejected if the mark indicating the vote is placed on the ballot paper in such manner as to make it doubtful to which candidate the vote has been given. The R.O. shall count all the valid votes given by the postal ballot in favour of each candidate, record the total thereof in the result sheet in Form 20 and announce the same. Thereafter, all the valid ballot papers are kept in safe custody.

39. The Hand Book for Returning Officers published by the Election Commission of India contains instructions to the R.O.s regarding the counting of votes received by post. Instruction 14.1 reiterates that the postal ballots are to be counted first. Instruction 14.2 makes it clear that covers in Form 13C containing postal ballot papers received after the hour fixed for the commencement of counting of votes should not be opened. They should be rejected and kept in a separate packet and sealed notifying thereon the appropriate particular. Instruction 14.3 instructs the R.O. how the counting of postal ballot is to be done. It states that the covers in Form 13C received in time should be opened one after another. As each cover is opened, he should take out the declaration in Form 13-A and the cover in Form 13-B and scrutinize the declaration. If the declaration in Form 13A is not found in the cover or the declaration has not been duly signed and or not attested by an officer competent to do so or is otherwise substantially defective or if the serial number of ballot paper appearing in the declaration is different from the serial number on the cover in Form 13-B, the cover containing the postal ballot paper should not be opened, but the ballot paper should be rejected. Each such rejected cover should be endorsed suitably and the declaration and the cover should be placed in the cover in form 13-C. All such covers in Form 13-C should be kept together in a separate packet duly sealed and full particulars such as the name of the constituency, the date of counting and a brief description of contents should be noted thereon for easy identification. All the declarations in Form 13-A which have been found to be in order, should then be kept in separate packet in order to ensure that the secrecy of the postal ballot is kept inviolate. The packet should then be sealed noting thereon the particulars regarding the name of the constituency, the date of counting and brief description of the contents. This should be done before the covers in Form 13-B containing the ballot papers are opened.

40. Instruction 15 makes it very clear how the counting of votes received by post for parliamentary constituency is to be counted. It provides that, the ARO for the parliamentary constituency who will count the votes polled at a component Assembly Constituency, will have nothing to do with the votes received by post for the Parliamentary constituency. According to Rule 65 of the Rules if ballot papers are counted at more places than one, the provisions of Rule 54A of the said Rules will apply nobly to counting at the last of such places. It is possible to regard the place at which the R.O. finally counts and declares the result as the last place of counting in point of time. In other words, the procedure prescribed for R.O. of a parliamentary constituency is to get Form 20 result sheet duly completed from the AROs, then take up the counting of postal ballot papers as provided in Rule 54A and then proceed under Rule 63 and 64 of the Rules. Instruction 17.1 provides that, when the R.O. is engaged in counting the votes received by post, the work of distribution of control units of voting machines on the various counting tables can be done.

41. Rule 63 of the Rules provide that, (1) after the completion of the counting, the R.O. shall record in the result sheet in Form 20 the total number of votes polled by each candidate and announce the same. (2) After such announcement has been made, a candidate or, in his absence, his election agent or any of

his counting agents may apply in writing to the R.O. to recount the votes either wholly or in part stating the grounds on which they demand such re-count. (3) On such an application being made the R.O. shall decide the matter and may allow the application in whole or in part or may reject it in to if it appears to him to be frivolous or unreasonable. (4) Every decision of the R.O. under sub-rule (3) shall be in writing and contain the reasons therefore. (5) If the R.O. decides under sub-rule (3) to allow a re-count of the votes either wholly or in part, the procedure prescribed therein has to be followed. No step under the sub-rule shall be taken on the completion of the counting until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (2).

42. Dealing with these provisions the Supreme Court had an occasion to consider under what circumstances a recount could be ordered. What is the pleading required in such an Election Petition, what are the material particulars which have to be pleaded in the petition and what is the evidence to the adduced in support of such pleadings and under what circumstances the Court can order for recounting. A constitution bench of the Supreme Court in the case of ***RAM SEWAK YADAV vs K. HUSSAIN KAMIL KIDWAI AND OTHERS*** reported in ***AIR 1964 SC 1249*** has held:

> "6. An election petition must contain a concise statement of the material facts on which the petitioner relies in respect of his case. If such material facts are set out the Tribunal has undoubtedly the power to direct discovery and inspection of documents with which a civil Court is invested under the Code of Civil Procedure when trying a suit. But the power which the Civil court may exercise in the trial of suits is confined to the narrow limits of 0.11 Code of Civil Procedure. Inspection of documents which are referred to in the pleadings or particulars as disclosed in the affidavit of documents of the other party, and under R.18(2) of other documents in the possession of power of the other party.
>
> The returning officer is not a party to an election petition and an order for production of the ballot papers cannot be made under 0.11 Code of Civil Procedure. But the Election Tribunal is not on that account without authority in respect of the ballot papers. In a proper case where the interest of justice demanded it, the Tribunal may call upon the returning officer to produce the ballot papers and may permit inspection by the parties before it of the ballot papers: that power is clearly implicit in Ss.100(1)(d)(iii), 101, 102 and Rule 93 of the Conduct of Election Rules, 1961. This power to order inspection of the ballot papers which is apart from 0.11 Code of Civil Procedure may be exercised, subject to the statutory restrictions about the secrecy of the ballot paper prescribed by Ss.94 and 128(1).
>
> (7) An order for inspection may not be granted as a matter of course: having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided tow conditions are fulfilled:
>
> (i) that the petitioner for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and
>
> (ii) the Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary. But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection."

43. After referring to the various provisions of the Act and the Rules, the Supreme Court has further held that:

> "(9) There can therefore be no doubt that at every stage in the process of scrutiny and counting of votes the candidate or his agents have an opportunity of remaining present at the counting of votes, watching the proceedings of the returning officer, inspecting any rejected votes,

and to demand a re-count. Therefore a candidate who seeks to challenge an election on the ground that there has been improper reception refusal or rejection of votes at the time of counting, has ample opportunity of acquainting himself with the manner in which the ballot boxes were scrutinized and opened, and the votes were counted. He had also opportunity of inspecting rejected ballot papers, and of demanding a re-count. It is in the light of the provisions of S.83(1) which require a concise statement of material facts on which the petitioner relies and to the opportunity which a defeated candidate had at the time of counting, of watching and a claiming a re-count that the application for inspection must be considered."

44. Reiterating the aforesaid legal position, the Supreme Court in the case of ***Df. JAGJIT SINGH vs GIANT KARTAR SINGH AND OTHERS*** reported in ***AIR 1966 SC 773*** held:

"The scheme of the rules prescribed in Part V of the conduct of Election Rules 1961 emphasizes the point that the election petitioner who is a defeated candidate, has ample opportunity to examine the voting papers before they are counted and in case the objections raised by him or his election agent have been improperly over-rules, he knows precisely the nature of the objections raised by him and the voting papers to which those objections related. It is in the light of this background that S.83(1) of the Act has to be applied to the petitions made for inspection of ballot boxes. Such an application must contain a concise statement of the material facts.

....It may be that in some cases, the ends of justice would make it necessary for the Tribunal to allow a party to inspect the ballot boxes and consider his objections about the improper acceptance or improper rejection of votes tendered by voters at any given election; but in considering the requirements of justice, care must be taken to see that election petitioners do not get a change to make a roving or fishing enquiry in the ballot boxes so as to justify their claim that the returned candidate's election is valid. No hard and fast rule can be laid down in this matter, for, attempt to lay down such a rule would be inexpedient and unreasonable.

.....Vague or general allegations that valid votes were improperly rejected, or invalid votes were improperly accepted, would not serve the purpose which S.83(1)(a) has in mind. An application made for the inspection of ballot boxes must give material facts which would enable the Tribunal to consider whether in the interests of justice, the ballot boxes should be inspected or not. In dealing with this question, the importance of the secrecy of the ballot papers cannot be ignored, and it is always to be borne in mind that the statutory rules framed under the Act are intended to provide adequate safeguard for the examination of the validity or invalidity of votes and for their proper counting."

45. Following the aforesaid judgment, the Supreme Court in the case of ***JITENDRA BAHADUR SING vs KRISHNA BEHAR AND OTHERS*** reported in AIR 1970 SC 276 held as follows:

"....as to the rejection of the votes polled in favour of the unsuccessful candidate, under the rule before a vote is rejected the agents of the candidates must be permitted to examine the concerned ballot paper. Therefore it is quite easy for them to note down the serial number of the concerned ballot papers. Therefore if the election petition is silent as to the inspection of the ballot papers or whether the counting agents had noted down the serial numbers of those ballot papers or whether those agents raised any objection relating to the validity of those ballot papers; if so who those agents are and what are the serial numbers of the ballot paper to which each one of them advanced their objections; the material facts required to be stated, are not satisfied and hence scrutiny of ballot papers should not be ordered."

46. In ***Smt. SUMITRA DEVI vs SHRI SHEO SHANKER PRASAD YADAV AND OTHERS*** reported in ***AIR 1973 SC 215,*** the Supreme Court held that:

"Where the allegations in the election petition are vague and the petition does not contain an adequate statement of the material facts and the evidence adduced by the petitioner is found unreliable and no definite particulars are also given in the application as to the illegalities alleged to have been committed in the counting of the ballot papers, in the application for inspection of ballot papers cannot be allowed. A recount will not be granted as a matter of right but only on the

basis of evidence of good grounds for believing that there has been a mistake in the counting. It has to be decided in each case whether a prima facie ground has been made out for ordering an inspection."

47. Supreme Court in the case of ***BELIRAM BHALIK vs JAI BEHARI LAL KHACHI AND ANOTHER*** reported in ***AIR 1975 SC 283*** held:

"Since an order for recount touches upon the secrecy of the ballot, it should not be made lightly or as a matter of course. The court would be justified in ordering a recount or permitting inspection of the ballot papers only where all the material facts on which the allegations or irregularity or illegality in counting are founded, are pleaded adequately in the election petition, and the court trying the petition is prima facie satisfied that the making of such an order in imperatively necessary to decide the dispute and to do complete and effectual justice between the parties. Mere allegations that the petitioners suspects or believes that there has been improper reception, refusal or rejection of votes or there have been irregularities in the counting of ballot papers will not be sufficient to support an order of recount and inspection."

48. In ***CHANDRA SINGH vs CH. SHIV RAM VARMA AND OTHERS*** reported in ***AIR 1975 SC 403*** it. was held as follows:

"Rule 63 of the Conduct of elections Rules 1961 obligates the candidate to state the grounds on which he demands such recount'. It is plain that a mere doubt or small lead or unspecified blemish in the manner of the counting falls short of the needs of the said rule. Under the rule the demand for recount may be rejected it is appears to the Returning Officer to be frivolous or unreasonable. What is not reasonably grounded or seriously supported is unreasonable or frivolous. Suspicions of possible mischief in the process or likely errors in counting always linger in the mind of the defeated candidate when he is shocked by an unexpected. Result. The Returning Officer has to be careful, objective and sensitive in assessing the legitimacy of the plea for rerunning the course of counting, Victory by a very few votes may certainly be a ground to fear unwitting error in count given other circumstances tending that way. If the counting of the ballots are interfered with by too frequent and flippant recounts by courts a new threat to the certainty of the poll system is introduced through the judicial instrument. Moreover, the secrecy of the ballot which is sacrosanct, becomes exposed to deleterious prying if recount of votes is made easy. The best surmise, if it be nothing more than surmise, cannot and should not induce the judge to break open ballot boxes. If the lead if relatively little and/ or other legal infirmities or factual flaws hover around. Recount is proper, not otherwise. In short, where the difference is microscopic, the stage is set for a recount given some plus point of clear suspicion or legal lacuna militating against the regularity, accuracy, impartiality or objectivity bearing on the original counting. Of course, even if the difference be more than microscopic, if there is a serious flaw or travesty of the rules or gross interference, a liberal repeat or recount exercise, to check on possible mistake is a fair exercise of power. To tarnish the counting staff with bias is easy for any party who divorces means from ends. When the challenger belongs to the party in power a heavy strain is thrown on the strength of the moral fibre of the election staff whose fearless integrity is a guarantee of purity of the whole process but whose fortunes, before and after elections, may be cast with a political government whose key men may sometimes take disturbingly keen interest in the outcome of elections and election petitions. The Court should be reluctant to lend quick credence to the mud of partiality slung at counting officials by desperate and defeated candidates although what is more important is the survival of the very democratic institutions on which our way of life depends."

49. In the case of ***SHRI SATYANARAN DUDHANI vs UDAY KUMAR SINGH AND OTHERS*** reported in ***AIR 1993 SC 367*** it was held by the Supreme Court that:

"The secrecy of the ballot papers cannot be permitted to be tinkered lightly. An order of recount cannot be granted as a matter of course. The secrecy of the ballot papers has to be maintained and only when the Court is satisfied on the basis of material facts pleaded in the petition and supported by the contemporaneous evidence that the recount can be ordered."

In the facts of that case, it was held:

"..........only three line objection application was filed before the Returning Officer. No objection whatsoever was raised during the counting and no irregularity or illegality was brought to the notice of the Returning Officer. Even, the material in the election petition, has been pleaded with the object of having a fishing enquiry and it did not inspire confidence. A cryptic application claiming recount made by the contestant before the Returning Officer. No details or any kind was moved by the petitioner. Not even a single instance showing any irregularity or illegality in the counting was brought to the notice of the Returning Officer...."

Therefore, it was held there was no contemporaneous evidence to show any irregularity or illegality in the counting and, therefore, the order of recounting was rejected.

50. After reviewing the entire case law, the Supreme Court in the case of ***V.S. ACHUTHANANDAN vs P.J. FRANCIS AND ANOTHER*** reported in ***(2001) 3 SCC 81*** has restated the principles as under:

"1. The secrecy of the ballot is sacrosanct and shall not be permitted to be violated lightly and merely for asking or on vague and indefinite allegations or averments of general nature. At the same time purity of election process has to be preserved and therefore inspection and recount shall be permitted but only on a case being properly made out in that regard.

2. A petitioner seeking inspection and re-count of ballot-papers must contain averments which are adequate, clear and specific making out a case of improper acceptance or rejection of votes or non-compliance with statutory provisions in counting. Vague or general allegations that valid votes were improperly rejected, or invalid votes were improperly accepted would not serve the purpose.

3. The scheme of the rules prescribed in Part V of the Conduct of Elections Rules, 1961 emphasises the point that the election petitioner who is a defeated candidate has ample opportunity to examine the voting papers before they are counted, and in case of the objections raised by him or his election agent have been improperly overruled, he knows precisely the nature of the objections raised by him and the voting papers to which those objections related. It is in the light of this background that Section 83(1) of the Act has to be applied to the petitions made for inspection of ballot boxes. Such an application must contain a concise statement of the material facts.

4. The election petitioner must produce trustworthy material in support of the allegations made for a re-count enabling the court to record a satisfaction of a prima facie case having been made out for grant of the prayer. The court must come to the conclusion that is was necessary and imperative to grant the prayer for inspection to do full justice between the parties so as to completely and effectually adjudicate upon the dispute.

5. The power to direct inspection and re-count shall not be exercised by the court to show indulgence to a petitioner who was indulging in a roving enquiry with a view of fish out material for declaring the election to be void.

6. By mere production f the sealed boxes of ballot papers or the documents forming part of record of the election proceedings before the court the ballot papers do not become a part of the court record and they are not liable to be inspected unless the court is satisfied in accordance with the principles stated hereinabove to direct the inspection and recount.

7. In the peculiar facts of a given case the court may exercise its power to permit a sample inspection to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made in support of a prayer for re-count and not for the purpose of fishing out materials."

51. The Supreme Court in the case of ***Km. SHRADHA DEVI vs KRISHNA CHANDRA PANT AND OTHERS REPORTED*** in ***AIR 1982 SC 1569*** has held as follows:

"In an election petition for relief of scrutiny and recount on the allegation of miscount, it is not the requirement of law that in respect of each ballot paper rejected as invalid a specific averment must be so made as to identify the ballot paper and only those that can be correlated to the allegations in the petition specifically and not generally shall be recounted.

When a petition is for relief of scrutiny and recount on the allegation of miscount, the petitioner has to offer prima facie proof of errors in counting and if errors in counting are prima facie established a recount can be ordered. If the allegation is of improper rejection of valid votes which is covered by the broad spectrum of scrutiny and recount because of miscount, petitioner must furnish prima facie proof of such error. If proof is furnished of some errors in respect of some ballot papers, scrutiny and recount cannot be limited to those ballot papers only. If the recount is limited to those ballot papers in respect of which there is a specific allegation of error and the correlation is established, the approach would work havoc in a Parliamentary constituency where more often 10,000 or more votes are being rejected as invalid. Law does not require that while giving proof of prima facie error in counting each head of error must be tested by only sample examination of some of the ballot papers which answer the error and then take into consideration only those ballot papers and not others. This is not the area of inquiry in a petition for relief of recount of the ground of miscount."

52. Therefore, the law on the point is well settled. In a petition seeking for recounting on the ground of improper counting in the election petition, the petitioner is expected to give concise statement of the material particulars of the ballots which have been wrongly rejected or improperly received in favour of the return candidate. The candidate and his election agents would have full opportunity to witness the counting by the Returning Officer. If at the time of counting when a ballot paper is wrongly rejected they have a right to object to the same. They have right to have inspection of the same and they are entitled to make a note of the number of ballot papers received, rejected and other particulars. If an election petition is to be founded on those grounds it necessarily follows that the minimum requirement expected of the petitioner is to mention these particulars in the Election Petition. It is thereafter he has to substantiate those allegations by evidence. It is after scrutiny of the pleadings and the evidence adduced, if the court is prima facie satisfied that there is some irregularity in counting, it can be said a case for recounting is made. On the contrary if the election petition is silent about these particulars, allegations are very vague and too general let alone leading evidence to support such vague allegations, the petition itself would not be maintainable. Merely because the difference in the votes polled by the two candidates is meager it is not ground for ordering recounting or supporting any presumption that there is a possibility of a miscount. In the background of this legal position let me consider the issues arising in this petition.

53. **Re. Issue No.(1):** The specific case pleaded by the petitioner as could be gathered from the pleadings and as contained in paragraph 9 and 10 of the petition discloses the following allegations.

54. The petitioner and his election agent was very much present at the counting venue at the time specified for counting. The postal ballot papers had to be taken first for counting. The candidate and his election agent were supervising the seating arrangements of their agents in the assembly segments. The R.O. without announcing that the actual counting of postal ballots papers commenced the counting of postal ballot. There were 1017 ballot papers and 653 ballot papers were rejected without assigning proper reasons. The rejection of postal ballot papers were improper and wrongful. If these votes are properly accepted and taken into account it would come to the petitioner and votes that had come to the petitioner are wrongfully rejected. The R.O. has not assigned the reasons as required under Rule 54-A of the conduct of the Rules. Out of 364 votes taken into consideration for counting under postal ballots 128 votes have been polled in favour of the petitioner, i.e., 35%. If the 4th respondent had opened the postal ballots in accordance with rule 54-A of the Rules, the petitioner would have secured at least 40%, i.e., about 260 votes from out of the rejected votes. Rejecting of 653 votes, non counting of the said votes has resulted in materially affecting the result of the Raichur Constituency.

55. To understand this plea, we have to look to the evidence of P.W.-1. In the affidavit filed by way of examination in chief, the very words found in the election petition have been repeated. There are no additions or omissions. In the cross examination, he has stated that: "On 13.03.2004, the counting of votes commenced at 8.00 a.m. Myself, election agent and counting agents were all present within the counting hall before the commencement of the counting. The total number of postal ballots received was 1017. It is not correct to suggest that these postal ballots were counted first. It is not correct to suggest that myself, my counting agent, election agent were all present at that time when postal ballots were

counted. It is true that out of 1017 postal ballots 653 ballots were rejected. It is not correct to suggest that myself, my election agent, counting agents and BJP candidate were present when these 653 ballot papers were rejected. I do not know whether the counting supervisor and counting assistant assisted the Returning Officer in counting of votes. If is not true to suggest that 653 postal ballot papers were invalid and they were rejected giving valid reasons. If I am shown the ballot papers I will be able to say which is valid and which is not valid, without seeing the same I am unable to say which is valid and not valid. I am not aware of the contents of Form-13A, 13B and 13C in respect of postal ballot papers. I am not aware of the requirements of a postal ballot. It is false to suggest that 653 ballot papers were rejected because they did not comply the legal requirements".

56. Therefore, from the aforesaid evidence of the petitioner it is clear that his grievance was that the postal ballot papers have to be counted first at the commencement of the counting. Even though he was present at 8.00 a.m. he was not informed about the said counting, consequently, neither he nor the election agent were present and in their absence 653 postal ballots have been wrongfully rejected. He is not able to say whether the reason given for rejection is valid or not and after looking into the same, he will be able to say whether they are rightly or wrongly rejected. This evidence is consistent with the plea which he has taken in the petition. But taking advantage of the answers given by the R.O. who was examined as P.W.-2, in cross-examination where he has stated in examination in chief that: "The postal ballots had to be counted by the R.O. at the start of the counting. The candidate and their election agents are permitted to be present throughout the counting before the R.O. The postal ballots are counted by the R.O. on one table. Simultaneously, each ARO starts counting other ballots. I have taken up the counting of postal ballot papers first and simultaneously AROs also started counting other votes. The postal ballot papers are counted and they are recorded also in accordance with law. In the cross-examination he has stated that: "The counting of postal ballot and other ballots were well planned and I was duly assisted by other officials. It is true that the venue of counting and the time at which the counting begins was duly informed to all the candidates, the election agents and counting agents. At the commencement of the counting I took up the counting of the postal ballots of Raichuer Constituency. Similarly, each of the R.O. of each assembly constituency also took up counting of the postal ballots received in respect of each assembly constituency. Before commencement of the counting, in the public address system announcement was made to the effect counting begins. All the candidates, their election agents and counting agents were present at the commencement of the counting agents were present at the commencement of the counting. The postal ballots were counted by me at the commencement of counting. Similarly, AROs counted the postal ballot papers pertaining to their respective assembly constituency. Simultaneously, counting supervisor started counting the other votes in their respective tables. The total number of postal ballots received for No.3 Raichur Parliamentary Constituency is 1017. I have counted all the covers containing the ballot papers. Out of 1017 postal ballot covers received 364 postal ballots were found valid. The conclusion reached to reject the postal ballot papers is based on the facts which I noticed in the declaration form. The rejection of ballot papers may be on the ground that the declaration is not complete or after the postal ballot is seen if it contains the signature of the voter or if he has voted for more than one candidate or if there is no vote. When the aforesaid infirmities are noticed I have no discretion except to reject the ballot as invalid. In all the rejected ballots I have given reason thereafter I have duly signed it and then rejected it. Neither the petitioner not his election agent either immediately after the counting of postal ballots or thereafter at any time pointed out any infirmity, or illegality or mistake in rejecting the postal ballots. When the petitioner made a request for recounting of votes he has not complained that on account of wrong rejection of postal ballot recounting is to be ordered.

57. Therefore, relying on the evidence of these witness where he has stated that simultaneously the Counting Supervisor started counting the said votes in the respective tables it is contended that postal ballets and other ballets were simultaneously counted which is contrary to the code contained in Rule 54-A. Therefore, it is submitted that the petitioner has made out a case for recounting if not for setting aside the election of the returned candidate on that ground.

58. Law mandates that the postal ballots shall be counted first. Law also mandates that the candidates and their agents should be duly informed the place of the counting and the time of the

counting. The grievance is that the petitioner was not informed of the time of the counting. Postal ballots were not counted first and, therefore, petitioner and his agents had no occasion or opportunity to be present at the commencement of the counting of postal ballot papers. Now we have the evidence of the Returning Officer, two Assistant Returning Officers, the parties and the election agent of the first respondent. It is also to be borne in mind that the petitioner is not a stranger to the election. So far he has contested five times. Three times he has been successful, twice including the present election he has lost. It is an admitted fact that he was present at the place of counting with his election agent at 8 a.m. because he knew counting would start at 8 a.m. on 13.05.2004. His grievance appears to be R.O. did not declare the counting will start at 8 am and he will take up the postal ballots first. Except the self serving statement of the petitioner, there is no evidence to substantiate the plea. On the contrary we have the evidence of the witnesses examined before this Court who have categorically stated voting commencement at 8 am, R.O. commenced the counting of postal ballots at 8 am and the candidates including the petitioner, their election agents were present at the time of counting. In the right of this legal evidence, the plea and the evidence of the petitioner contrary to the same is difficult to accept in the light of the proved facts.

59. Probably after realising the futility of this plea an attempt was made by the learned counsel for the petitioner taking advantage of an answer given by the PW-2, RO, to the effect that the counting of other votes also commenced simultaneously with that of counting of postal ballots by him, an argument was constructed that, when the law declares that the counting of postal ballots shall be done first it implies that till postal ballots are counted, other votes should not be counted. In the light of the categorical admission by the R.O. that the postal ballots and other votes were counted simultaneously, counting is contrary to law, illegal and, therefore, it is vitiated and the petitioner is entitled to recounting.

60. The said argument proceeds on the assumption that in law there is a prohibition for counting of other votes simultaneously with that of the postal ballots. The question is, is there any such prohibition. All that Rule 54A states is R.O. shall first deal with the postal ballot papers in the manner hereinafter provided. All that the Rule mandates is the postal ballots shall be counted first. The reason is not far to seek. It is contained in sub-rule (2) of Rule 54A. Sub-rule (2) provides that, no cover in Form 13-C received by the R.O. after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted. In other words, postal ballot papers continue to come even after the polling date. It is possible that postal ballots may reach the R.O. on the counting day after the commencement of the counting. Whereas other votes are concerned after the polling is over there is no question of addition of any votes. It is in that context the Parliament wanted to make its intention clear by saying, after the counting is commenced if any ballot papers are to be received that shall not be taken into consideration. They shall be kept separately and they shall even not be opened and they shall be treated as rejected votes. It is in that context a dead line has to be fixed so far as postal ballot papers are concerned. Therefore the Rule says postal ballot shall be counted first, thereby meaning that postal ballots received after the counting shall be rejected. It can be further stated that other votes shall not be counted before the commencement of counting of postal ballots but it does not follow that other votes are to be counted only after the counting of postal ballot papers. In fact relying on sub-rule 11 of Rule 54A it was contended the R.O. after counting of all valid votes given by the postal ballot in favour of each candidate has to record the total thereof in the result sheet in Form 20 and announce the same and only thereafter the other votes could be taken for consideration. The process of counting clearly set down in the rules do not indicate any such intention on the part of the Parliament. On the contrary, Rule 55 clearly says that the R.O. may have the ballot box or boxes used at more than one polling station opened and the ballot papers found in such box or boxes counted simultaneously. If the counting is being conducted in more than one place, the place where the R.O. is placed is treated as the last place where the ballot papers are counted. Therefore, a reading of the se provisions in the context in which it is used, keeping in mind the object with which these Rules are framed, makes it abundantly clear in law there is no prohibition for counting of postal ballots and other votes simultaneously. The requirement of law is postal ballots counting shall be taken first, i.e., at the commencement of counting, so that postal ballots received after counting is not taken into consideration.

61. As stated earlier, this is not the grievance made out by the petitioner in the Election Petition. It is an argument put forth on the basis of the answer which they have obtained in the cross examination of the R.O. As there should be a specific plea, then evidence supporting the same, then only the Court can say whether a particular case is made out or not. Any amount of evidence without a plea is not of any assistance to the petitioner and the Court cannot by just looking into one sentence here and there, in the absence of a specific plea as required under Section 83 of the Act can come to the conclusion that a particular fact is proved though not pleaded.

62. Secondly, from the evidence and the pleadings it is clear petitioner was not present when the postal ballots were counted. Therefore, he is completely ignorant about the role of the R.O. while counting of these votes. In fact he has gone to the extent of saying unless those ballot papers are shown to him, he is unable to say whether they are rightly rejected or not. Therefore, his contention and the pleadings that the R.O. has rejected 653 ballot papers without assigning proper reason, if those votes are properly accepted and taken into account it would come to the petitioner and votes that had come to the petitioner are wrongfully rejected and petitioner would have secured 40%, i.e., 260 votes from out of the rejected votes, is a mere ipsy dipsy of the petitioner. Absolutely it has no basis. On such vague allegations an order for recounting cannot be made as is clear from the law declared by the Supreme Court in the aforesaid cases. Therefore, I do not find any substance in the contention of the petitioner and issue No.1 is held against the petitioner.

63. **Re. Issue No.2:** In so far as issue No.2 is concerned the plea is specific. The grievance of the petitioner is as is clear from Ex. P16, Part-II of Form 17C pertaining to Polling Station 71, 117 votes are allotted in his favour whereas while transferring the said votes to Form 20, the election sheet, only 15 votes are mentioned and, therefore, he has lost 102 votes. The very exhibit shows as against petitioner's 117 votes, the first respondent has secured 242 votes but while transferring those votes to Form 20 what is mentioned is only 147 and thus the first respondent also has lost 97 votes. Therefore, the difference would be only 5 votes. The difference in the margin between the petitioner and the first respondent is 508 votes and, therefore, these 5 votes would not materially affect the election and the returned candidate.

64. In this connection, it is relevant to notice that for the first time through out the country electronic voting machines were used for the purpose of voting. Accordingly, the Act was also amended by introducing Section 66A. Section 56C deals with counting of votes. It provides, after the R.O. is satisfied that a voting machine has in fact not been tampered with, he shall have the votes recorded therein counted by pressing the appropriate button marked "Result" provided in the control unit whereby the total votes polled and votes polled by each candidate shall be displayed in respect of each such candidate on the display panel provided for the purpose in the unit. As the votes polled by each candidate are displayed on the control unit, the R.O. shall have,-

(a) the number of such votes recorded separately in respect of each candidate in Part-II of Form 17C;

(b) Part II of Form 17C completed in other respects and signed by the counting supervisor and also by the candidates or their election agents or their counting agents present; and

(c) Corresponding entries made in a result sheet in Form 20 and the particulars so entered in the result sheet announced.

Therefore, at the counting place, on the counting day after the seal put to the electronic voting machines (hereinafter for short called as the "EVM") is opened, the R.O. is expected to press the button marked "result". Then first the total votes polled is displayed. The R.O. shall take the said number, enter in Part II of 17C. Thereafter, the votes polled by each candidate is displayed. The said votes are also recorded in Part II of Form 17C as against the name of each candidates. It is thereafter the said forms are duly signed by the R.O. agents and the candidates and then from the said form the figures are transferred to the result sheet, Form 20. As is clear from Ex.P17 there is a mistake. Same number of votes are shown for both Polling Station No. 71 as well as to 77. Thereby there is a clerical error. Here if this clerical error is viewed properly the number of votes petitioner has lost in the bargain is only five and that does not materially affect the result. On that ground it is not possible to set aside the election or for ordering of recount. In fact the learned counsel for the first respondent pointed out one such mistake also has happened in Polling Station No.101. There because of such a mistake 20 extra votes have been

casted in favour of the petitioner and if that is taken into consideration, the margin of votes with which the first respondent would win the election would go up by 20 votes. These mistakes have not materially affected the result of the returned candidate. Notwithstanding these clerical errors, a case for setting aside the election and ordering for recount on this count is not made out. Hence, issue No.2 is held against the petitioner.

65. **Re. Issue No.3:** In so far as issue No.3 is concerned, the entire case of the petitioner is based on the fact that there is a difference in the figures mentioned in between the voter's turn out report and Form No.20. In the petition, in the evidence filed in examination in chief by way of affidavits, the petitioner has clearly set out the Polling Station number, the name of the Polling Station, voters turn out as per the voters turn out report, showing the men, women total, votes allocated in Form 17C and votes allocated in Form 20 and contends that there is a difference of 389 votes between the figures mentioned in the voters turn out report and Form 17C and Form 20. The undisputed evidence which is on record as well as the statutory provisions show that on the polling day when a voter visits the respective polling stations where his name finds in the voters list, the officials should enquire his name, father's name, address. If they tally with the entry made in the marked electrol roll they will round of the serial number where his name is found. Thereafter, voter's signature is taken in the register of voters. After that voter is permitted to exercise his vote. After the time stipulated is over or after the voters who have entered the booth have cast their votes, the Presiding Officer would prepare the voter's turn out report. The said report is prepared on the basis of the entries found in the marked electrol roll and the register of votes maintained at each polling station. The said statement indicates the gender wise record of voters who turn out to cast the votes. After the last voter records the voting the Presiding Officer closes the voting machine by pressing the button 'closed". After the button "closed", the machine displays the number of votes recorded. It does not show gender wise, candidate wise recording of votes. The R.O. fills in Form 17 Part I the number of votes so recorded in the voting machine.

66. It is also on record after a voter enters a polling station after he identifies himself and after the officials round off the serial number in the voters list he may decline to cast his vote. It is also possible after he puts his signature in the register maintained and he is permitted to vote he may decline to vote. If after putting such signature he declares that he intends to vote in favour of a particular candidate the Rules provide for the officials preventing him from casting the vote. As the elections this time was conducted for parliamentary constituency as well as for the assembly, a voter may choose to vote in the assembly and may not choose to vote for the parliamentary and vice versa. But, it is only when he casts the vote by pressing the button, it can be said he has casted the vote and that is the vote which has to be taken into consideration. In fact there is a column prescribed in Form I of Part 17C where the officials are expected to make a mention of those factors who after identifying did not cast their votes. All this clearly demonstrates that all the persons who enter the polling station do not necessarily vote in the election. There is bound to be discrepancies between the persons who enter the polling station and the persons who actually vote. In fact under the Act and the Rules there is no statutory recognition for the entries the officials make in the voters turn out report, voters register. All that the hand book for returning officer instructs the R.O. to do is after putting a tick mark against the name of the person, who is identified himself, they are also expected to mention therein the sex of the person voted so that in the end of the day for statistics purpose they would come to know how many have entered the polling station for voting and out of them how many are men and women. The said information has to be sent to the Election Commissioner for the purpose of statistics. These figures have nothing to do with the number of votes cast to be counted on the counting day. Unless a voter presses the button in the EVM he has not casted his vote and in the end of the day after the polling is over by pressing the button "closed", the EVM displays the total number of votes polled in that polling station and that figure is reflected in Part-I of Form 17C along with the particulars such as number of voters who after entering the polling station did not cast their votes. If there is a discrepancy they are expected to make a note in the prescribed column and then Part I of 17C and the voting machine is sent for safe custody. On the counting day after the seal is opened again the button "start" is pressed, then the number of votes recorded are displayed. That figure is taken into Part II of Form 17C and thereafter the votes polled by each candidates is displayed which is also

entered in Part-II of 17C. From there entries are made in the result sheet. Admittedly, in the instant case barring one polling station there is absolutely no difference between the votes recorded on the counting day in Part II of 17C and in Form 20. The petitioner's grievance is not in respect of difference in votes contained in Part I of Form 17C and Part II of 17C. The grievance only is difference between the votes entered in the voters turn out report and in form 20. As the voters turn out report has no legal standing in the entire scheme of things and it only reflects the number of people went to voting, merely because there is a difference in the said statistics prepared by the Election Commissioner for the purpose of statistics, it cannot be said that there is any illegality committed in counting of votes.

67. The material on record discloses when the petitioner sought for recounting immediately after the R.O. declared the number of votes secured by each candidate he filed an application for recounting. All that has been said in the application for recounting is there is a variation of votes during counting and there is a meager margin of votes, meager difference between him and the Congress candidate so he requested for recounting. He wanted recounting of assembly constituency wise so that the correct counting of votes could be traced. Annexure-P came to be issued by R.O. rejecting the said request and stating that when the figures are compared between the 8 assembly segments and the entry in Form No.20. they did not find any mistake, the figures mentioned are correct. Merely because the margin of difference between the successful candidate and the loser is small that cannot be a ground for recounting. Even though the candidates, their agents had full opportunity to object to the figures no one has raised any objection at the time of counting and making entries in the prescribed form. Even while counting postal ballots when such an opportunity was given and when counting was done in the presence of the candidates no such objections are raised. Therefore, the request of the petitioner for recounting was rejected. A reading of the complaint of the petitioner makes it clear his grievance was there was a variation during counting. Now, the case sought to be made is not variation during the counting, the variation between the figures found in the voters turn out report which was prepared on the polling date and Form 20 and 17C which were entered on the date of counting. The petitioner when he made the objections had never in his mind the plea which he has now raised in the Election Petition. The other reason given was the margin is meager. It is settled law that meager margin is not a ground for recounting. If there is a microscopic difference coupled with prima facie evidence of illegality in counting then that may justify an order for recounting. Here the difference between the votes is 508. Absolutely no illegality is pointed out during counting. Allegations made in respect of counting of postal ballots are found to be without any basis and in fact before the Court by consent of parties certified copies of Form No.17C is marked, Form 20 is marked. Even the voters turn out report is marked. A perusal of the undisputed documents coupled with the evidence of the witnesses clearly establishes that there was absolutely no illegality in the counting of votes. Barring two clerical mistakes which is crept in, one shows that the petitioner should have got five more votes, another shows the petitioner got twenty extra votes to which he is not entitled, nothing else is pointed out. Therefore the issue No.3 is also held against the petitioner.

68. **Reg. Issue No.4:** Section 82 of the Act mandates who shall be joined as parties in an election petition. It states that:

> "A petitioner shall join as respondent to his petition-(a) where the petitioner, in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other that the petitioner and where no such further declaration is claimed, all the returned candidates; and (b) any other candidate against whom allegations of any corrupt practice are made in the petition."

69. Therefore the statute specifically provides who should be the parties. If the candidate is not seeking a declaration that he should be declared as elected then, it is suffice if he makes the returned candidate a party to the election petition. But in the event he wants a declaration that he is to be declared as elected, then he should make all the candidates who contested the election as parties. When corruption is urged as a ground to set aside the election, the candidate against whom the allegation of corruption are made ought to be made a party. Beyond this, no other person could be made parties.

70. Dealing with this provision, the Supreme Court in the case of **Jyothi Basu & others Vs. Debi Ghosal & Others,** reported in **AIR 1982 SC 983** has held that Section 81, 82 and 86(4) of the Act, deals with who may present an election petition, who should be joined as parties and who can be joined as parties. But there is not provision dealing with the question as to who may be joined as respondent. Therefore, it is clear that the contest of election petition is designed to be confined to the candidates at the election. All others are excluded. The ring is closed to all except the petitioner and the candidates at the election. If such is the design of the statute, how can the notion of 'proper parties' enter the picture at all. Therefore, it was held that the concept of proper parties is and must remain alien to an election dispute under the Act. Only those may be joined as respondents to an election petition who are mentioned in Section 82 and Section 86(4) and no others. However, desirable and expedient it may appear to be, none else shall be joined as respondents. A person who is not a candidate cannot be joined as respondent to the election petition.

71. Following the aforesaid judgment, the Supreme Court in the case of **B. SUNDARA RAM REDDY Vs ELECTION COMMISSION OF INDIA AND OTHERS** reported in **1991(1) Suppl. SCC 624,** has held that Section 82 of the Act specifies the person who are required to be joined as respondents to an election petition. Under this provisions the returned candidate is a necessary party as a respondent and where relief for a declaration is claimed that the election petitioner, or any other candidate be duly elected, all the contesting candidates are necessary to be impleaded as respondents to the petition. No other person or authority except as aforesaid is required to be impleaded as a respondent to an election petition under the Act. The Election Commission of India is therefore not a necessary party to an election petition.

72. Further they proceeded to hold that since Section 82 designates the persons who are to be joined as respondents to the petition, provisions of the Civil Procedure Code, 1908 relating to the joinder of parties stands excluded. Under the Code even if a party is not necessary party, he is required to be joined as a party to a suit or proceedings if such person is a proper party, but the Representation of the People Act, 1951, does not provide for joinder of a proper party to an election petition. The concept of joining a proper party to an election petition is ruled out by the provisions of the Act. The concept of joinder of a proper party to a suit or proceeding underlying Order I of the Civil Procedure Code cannot be imported to the trial of election petition in view of the express provisions of Section 82 and 87 of the Act. The Act is a self contained Code which does not contemplate joinder of a person or authority to an election petition on the ground of proper party.

73. Therefore, it is clear that though Section 87 of the Act which deals with the procedure before the High Court to be followed in an election petition, such as subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits.

74. Therefore, the application of CPC is subject to the provision of the Act and Rules. Section 82 provides that who shall be the parties to the petition. The application of CPC in so far as joining of parties stand excluded. Therefore, the concept of necessary party, proper party in the context in which it is understood under the provisions of CPC cannot be imported into the election petition which is clearly governed by Section 82 of the Act. When Section 82 makes it very clear that in any election petition the fight is between the person who contested the election and none less, persons who are totally unconcerned, are alien and are to be excluded. Even though allegations of negligence and improper allocation of votes and not complying with the Act, Rules, Orders and notification are made against officials who were involved in the polling or counting, in the absence of any law providing for those persons being made parties in an election petition and when the provisions of CPC in so far as addition of parties stands excluded by virtue of Section 82, the question of impleading the R.O. to the election petition would not arise. The Act is a self contained code which does not contemplate joinder of a person or party to the election petition either on the ground that he is a necessary party or proper party. Therefore, the contention that the election petition is not maintainable on the ground that the R.O. against whom allegations are made in the writ petition is not made a party is without any substance. Accordingly issue No.4 is held against the 1st respondent.

75. Under these circumstances, I am of the view petitioner has failed to plead and establish a case of improper rejection of valid votes or improper allocation of votes as pleaded by him. The entire case is based on surmises and conjectures which are not supported by any material. It appears the meager margin of difference in votes has prompted the petitioner to seek for recounting and when that request was refused an attempt is made by filing of this Election Petition for the purpose of a roving enquiry to find out in the course of the trial whether any material would surface. Unfortunately, the petitioner has miserably failed in such an attempt. Therefore, the petition fails. Petition is accordingly dismissed. No costs.

By Order,
TAPAS KUMAR
Secretary,
ELECTION COMMISSION OF INDIA.

PR-9

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

Dated: 16th March, 2005
25, Phalguna, 1926 (Saka)

ERRATA

No.76/KT-HP/2005:- In Commissioner's Order No. 76/KT-HP/2005 Dated: the 7th March, 2005 existing entry in column 4 against 17-Mangalore at Sl.No.5, the entry "Account not lodged" may be read as "Account not lodged in the manner required by law".

By Order,
TAPAS KUMAR
Secretary,
ELECTION COMMISSION OF INDIA.

PR-12

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001
ಸಿ.ಆ.ಸು.ಇ.2 ಚುಕಅ.06, 23ನೇ ಜನವರಿ, 2006

Dated:4th January, 2006
14 Pausa, 1927 (Saka)

NOTIFICATION

No.82/KT-LA/(3/2004)/2005:- In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951). the Election Commission of India hereby publishes the Judgement/ Order of the High Court of Karnataka. Bangalore dated: 20.07.2005 in Election Petition No.3 of 2005.

IN THE HIGH COURT OF KARNATAKA, BANGALORE
DATED THIS THE 20TH DAY OF JULY, 2005
BEFORE
THE HON'BLE MR. JUSTICE R. GURURAJAN ELECTION PETITION NO.3/2004

BETWEEN

V. Nagaraj, S/o Varadappa,
42 years, No.34, 2nd Main Road,
Swanthatrapalya,
Hanumanthapura, Sriramapura,
Bangalore. ....Petitioner
(By Sri N. Sriral Reddy & Sri R.V. Ramesh Kumar, Advs)

AND

1. The State of Karnataka,
By its Chief Secretary,
Bangalore-1.
2. The Chief Election Commissioner,
Government of India, New Delhi.
3. Election Commissioner,
State of Karnataka, Cubbon Park, Bangalore.

4. The District Electroal Officer,
Bangalore District, Cubbon Park,
Bangalore.
5. Sri Dinesh Gundu Rao,
S/o Late Gundu Rao,
35 years, No.159, MLA Layout,
R.T. Nagar, Bangalore-32. ....Respondents
(By Sri B. Manohar, AGA for R1, 3 & 4, Sri Krishna S. Dixit for R2,
Sriyuths. Raghavendra Prasad, Anant Mandgi, And Satish G. Raikar for R5,
R6-18 are deleted V.O.D. 26.07.2004.)

This Election Petition filed under Section 81 of the representation of people Act, 1951 by the petitioner-candidate at 2004 praying to direct the respondents 2, 3 & 4 to verify the correctness of the voting machine by an expert Software Engineer engaged by the petitioner and to set-aside the declaration of Election of the 5th respondent (Ann.A), if the voting machines were manipulated and etc.,

This election petition coming on for Further Orders this day, the court made the following:

ORDER

Petitioner is before me seeking for a prayer to direct the respondents 2, 3 and 4 to verify the correctness of the voting machine by an expert software engineer engaged by the petitioner and for a further order of setting aside the election of the fifth respondent if the voting machines were manipulated.

2. This court issued notice only as against R-1 to 5 in terms of an order dated: 26.07.2004. Thereafter the matter was posted from time to time. Petitioner during the pendency of the proceedings sought withdrawal of the petition. In these circumstances an order was passed by this court directing the petitioner to publish the same in terms of Sec.109 of the Representation of Peoples Act 1951.

3. Today the matter is listed for further orders. In terms of the order of this court, the withdrawal is published in the official gazette Dated: 13.07.2005.

4. Heard the learned counsel for the parties and perused the application filed under Sec. 109 of the Representation of Peoples Act.

5. After hearing, this court is satisfied that the application for withdrawal is for bona fide reasons. In these circumstances, the application for withdrawal is accepted. Election Petition is ordered to be withdrawn in terms of the gazette notification.

No costs.

By Order,
TAPAS KUMAR
Secretary,
ELECTION COMMISSION OF INDIA.

PR-14

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001
ಸಿ.ಆ.ಸು.ಇ.3 ಚುಕಅ.06, 23ನೇ ಜನವರಿ, 2006

Dated:3rd January, 2006
13 Pausa, 1927 (Saka)

NOTIFICATION

No.82/KT-LA/(5/2004)/2005:- In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951). the Election Commission of India hereby publishes the Judgement/ Order of the High Court of Karnataka. Bangalore dated: 21.03.2005 in Election Petition No.5 of 2004.

IN THE HIGH COURT OF KARNATAKA, AT BANGALORE
DATED THIS THE 21ST DAY OF MARCH, 2005
BEFORE
THE HON'BLE MR. JUSTICE D.V. SHYLENDRA KUMAR
ELECTION PETITION NO.5 OF 2004

Between:

Sri Ramu
S/o Bhimla Chawan,
Aged about 55 years
R/o H.No.18/3/39/1/C, Post office Wadi Junction,
Near Police Station, Taluk Chittapur,
District: Gulbarga. ....Petitioner
(By M/s S.M. Chandrashekar & P.S. Malipatil, Advs)

AND

1. Sunil Vallapure
S/o Yamunappa,
Age major, R/o H.No.171, Shanthinagar Post Office,
Gulbarga, District: Gulbarga.
2. C. Gurunath, S/o Chandram,
Age major, R/o. H.No.2-1-80, HMP Colony Post Office,
Shahabad, Tq: Chittapur, District: Gulbarga.
3. Subhash S. Pawar,
S/o Somareddy, Age major, R/o. Seabar Katta,
Post Office Shahabad, Tq: Chittapur, Dist: Gulbarga.
4. Chandrashekar,
S/o Siddu Naik, Age major, R/o H.No.2-3-41, HMP Colony Post Office, Shahabad,
Tq: Chittapur, District: Gulbarga.
5. Mohan Hulli,
S/o Basappa Hulli, Age Major, R/o TRT 46/6, ACC Colony Post Office, Wadi Junction,
Tq: Chittapur, Dist: Gulbarga.
6. Suresh
S/o Basanna Goure, Age Major, R/o H.No. MYG 41, KHB Colony, Old Jewargi Road, Post Office,
Gulbarga, Dist: Gulbarga.
7. Thimmaiah B.
S/o Bhimappa Dariyapur, Age Major, R/o Bhimnagar, Kotnur 'D' Post Office,
Gulbarga, Dist:Gulbarga.
8. H.V. Diwakar,
S/o Venkatayya, Age Major, R/o H.No.1-5842, Jamshetty Building, Oneway Station Road,
Post Office Gulbarga, Dist: Gulbarga.

.............Respondents

[M/s. Ashok Haranahalli and G. Krishnamurthy, Advs., for R-1; M/s M.C. Narasimhan and K.B. Narayana Swamy Advs., for R-5]

This election petition is filed under Section 81 of the Representation of People Act, 1951, by the petitioner candidate at 2004 general elections to the Karnataka Legislative Assembly Constituency No.11- Shahabad (SC) praying to declare that the declaration of result of respondent No.1 as returned candidate of Assembly Constituency No.11- Shahabad (SC) is void and illegal, and etc.

This petition coming on for orders this day, the Court made the following:

ORDER

This is an election petition presented under Section 81 of the Representation of the People Act, 1951, (for short the Act) by a candidate who had aspired to get elected to the Karnataka Assembly from Shahabad constituency in Chittapur Taluk of Gulbarga District. It was a case of so near and yet so far for the petitioner who had managed to poll a total number of 31.602 valid votes as against 32,610 votes polled by the respondent No.1 who was declared elected by the Returning Officer while announcing the result of the elections.

2. It is this declaration that is called in question through this election petition by the petitioner, the nearest rival to the elected candidate. A perusal of the pleadings in the election petition, inter alta, indicates that the election is sought to be set aside mainly of the ground of the returned candidate having indulged in corrupt practices and also that he was disqualified on the date of the election for contesting the election to the Assembly.

3. Petitioner has also sought for a declaration in his favour on the premise that if the result in favour of the elected candidate is set aside, the petitioner being the nearest person who had polled the next highest votes, should be declared as the duly elected candidate from this constituency.

4. Election Petition had been registered and summons had been issued to the respondents amongst whom figure the elected candidate as respondent No.1.

5. The respondent No.1, on entering appearance through counsel though had files his written statement has nevertheless come up with serveral application I.A. No.2/ 2004 filed under Order VII Rule

11 of Code of Civil Procedure, is for dismissing the election petition on the premise that the petition does not disclose a cause of action, I.A. No.3/ 2004 is one purporting to have been under Order VI Rule 17 of CPC for striking off the pleadings, I.A. No.4/ 2004 is also for striking off the pleadings but under Order VI Rule 16 of CPC.

6. Submission of learned counsel appearing for the applicant is that I.A. Nos. 3/ 2004 and 4/2004 are both for one and the same purpose that while filing I.A. No.3/2004 by mistake the provision of law had been mentioned as Order VI Rule 17 of CPC instead of Order VI Rule 16 of CPC and the respondent No.1 who had filed the application has therefore filed another application under the correct provision of law for the same relief and seeks for permission of the court to withdraw I.A. No.3/2004 as I.A. No.4/2004 serves the purpose for which I.A. No.3/ 2004 had been filed.

7. No objection to this course of action on behalf of the petitioner by Sri Malipatil, learned counsel for the petitioner, who submits that the request for dismissing I.A. No.3/ 2004 as not pressed may be granted. Accordingly I.A. No.3/2004 is dismissed as not pressed.

8. What survives for consideration is accordingly I.A. Nos.2/2004 and 4/2004. Though both these applications could have been heard together and even as submitted by Sri Ashok Haranahalli, learned counsel appearing for respondent No.1 that prayers in such applications have been dealt with in common in several decisions of the Supreme Court, for the sake of convenience, the applications are taken in the order of priority in which the provisions of law occur in the Code of Civil Procedure. Accordingly, I.A. No.4/2004 filed under Order 6 Rule 16 of CPC is taken up for consideration.

9. The prayer in the application is for striking off the pleadings in Paragraphs 6, 8, 9 and 10 of the petition. The application is supported by an affidavit sworn to by the applicant which, inter atia, states that the allegations of corrupt practices said to have been committed by the respondent No.1 as averred in the writ petition is by carrying of arrack sachets in a Tata Sumo vehicle; that the respondent No.1 has secured all votes held in his favour by indulging in corrupt practices; that such averments are bald, vague, unnecessary and frivolous and serves no point in allowing such averments to remain on record; that the averment as alleged by itself does not even amount to an allegation of corrupt practice as is understood under the provisions of the Act and therefore the application for striking off the pleadings.

10. Before taking up the actual objection taken in the application and supported by the affidavit, it may be useful to notice the contents of these paragraphs which read as under:

> "6. That the respondent No.1 has secured 32610 votes by corrupt practice. The Returning Officer had issued vehicle passes for election canvas to the respondent No.1. The passes issued by the Returning Officer was containing the registration number of vehicle which was used for such election canvas. One of such vehicles Tata Sumo bearing No.KA-28-M-1402 was checked by the Excise Department on 19.04.2004 at about 6 a.m. at 'Dominate Dhaba' near Bhankure village on Shahabad Road and found that 1410 arrack sachets containing 100 ml. Each (total 141 ltrs.,) in the said vehicle Tata Sumo and the driver was run away and Excise Department ceased (sic) 1402 sachets, (100 ml each) of arrack from the said vehicle and it was found that the pass issued by the Returning Officer was pasted on the glass of the vehicle saying that the vehicle was permitted for the use to canvas of Bhartiya Janatha Party casndidate of (SC) 11 Shahabad Assembly Constituency. The Excise Department Sepcial Officer filed a complaint on 19.04.2004 at about 4.30 p.m. and registered a case by the Excise inspector namely Mr. Suryakanth Kadam of Special Investigation Squads of Gulbarga Divn. Gulbarga as FIR No.561/ 2004 in Shahabad Rural Police Station, Shahabad. The above facts were came to know through Police Station next day as the FIR was registered and the FIR No.561/2004 was sent to the 2nd Addl. JMFC Court, Gulbarga along with application dtd: 19.04.2004 are produced as Annexures-B & C.
>
> 8. That the 1st respondent has been elected by corrupt practice by distributing arrack sachets to voters on the previous day of the election, the exercise squad along with the guards found the vehicle allowed to use for canvas by the respondent No.1 by issuing the vehicle passes was ceased along with arrack sachets of 1410 containing 100 ml, the total quantity of 141 ltrs. Hence, the votes secured by the 1st respondent by corrupt practice. Hence the declaration of 1st respondent as Returned candidate in the election is illegal and void."

9. That the 1st respondent not only used arrack sachets for distribution to the voters in the village called Bhankure, which is coming under the Assembly Constituency of Shahabad (SC) 11 to secure votes by corrupt pracitce.

10. That the respondent No.1 before contesting for Karnataka Assembly Election, he was Class-I Civil Contractor and he was doing the work under the State Government. Hence he had disqualification for contesting the Assembly Election. The copy of the certificate issued by the PWD Authorities will be produced after obtaining the certified copy at the time of evidence."

11. The objection taken to the averments in Paragraph-6 of the petition is that it does not go beyond stating that there was a seizure of Tata Sumo jeep carrying arrack sachets by the excise authorities; that the vehicle was one which was authorized by the competent Officer to the used for canvassing purposes on behalf of the respondent No.I; that the mere averment of seizure of the vehicle carrying arrack sachets by itself does not amount to an allegation of corrupt practice; that the allegation or the averment is not even supported by further particulars giving details as to how that very incident by itself could constitute an act of corrupt practice on the part of the respondent No.I nor that the paragraph contains any plea that either arrack sachets were meant for distribution to the voters and for such reasons the averment in paragraph-6 as it does not constitute an allegation of corrupt practice, should be struck off.

12. The objection taken with regard to the contents of paragraph-8 of the petition is that the statement in the paragraph is misleading and vague; that a statement to the effect that certain arrack sachets were seized from the jeep cannot by itself constitute either an act of corrupt practice and the averment is a contradiction in terms, in as much as, once the arrack sachets are seized, there is no occasion for distribution of the arrack sachets to the voters etc.; that particulars of distribution of arrack sachets to voters is lacking in the paragraph; that there is no averment that, in fact, any other arrack sachets were distributed to the voters and as such, paragraph should be struck off.

13. So far as averment in Paragraph-9 of the petition is concerned, the objection is that the sentence does not make proper sense; that even here the averment that any arrack sachets were distributed to voters in the constituency is lacking; that no particulars of any distribution, place, time and persons involved are pleaded; that the averment is vague and nebulous and therefore should be struck off.

14. The objection taken to averments in Paragraph-6, 8 and 9 are with reference to the requirements of the contents of allegation of corrupt practice in the election petition.

15. With regard to Paragraph-10 of the election petition, the objection is on the ground that this paragraph, in fact, is one lacking in material facts; that while the paragraph seeks to allege that the respondent No.1 was disqualified from contesting the election as he was a Civil Contractor before contesting the election, the Paragraph is not one containing any averment that the respondent No.1 had a subsisting contract with the Government on the date of the election; that it is lacking in pleading about the particular contract with reference to which the disqualification is sought to be attached; that the averment in the last part of this Paragraph that certain certificate issued by the Public Works Department authorities shall be produced after obtaining certified copy at the time of the evidence in itself amounts to admission on the part of the petitioner that the petitioner does not have material facts nor is he in the knowledge of such material facts which is not obviously pleaded in the petition; that there is no scope for either producing any certified copy by way of evidence at a later point of time which is not so disclosed at the time of presentation of the petition; that if the details to constitute a material fact is lacking in the petition itself, the paragraph cannot be sustained as it does not comply with the requirement of section 83(1)(a) of the Act and applying the principles of Order VI Rule 16 of CPC, this paragraph also should be struck off.

16. Objections have been filed on behalf of the petitioner to these applications. The assertion on behalf of the petitioner in the objections filed to I.A. No.4/2004 are that the application itself lacks material facts; that the application is not tenable; that the application is liable to be dismissed; that the averments contained in Paragraphs 6, 8, 9 and 10 of the petition are not misleading or vague; that the averments indicate that the seized vehicle was used to carry the arrack sachets for distribution to the voters in the Assembly constituency and while carrying the arrack sachets, the Excise Department had seized the vehicle and that the pleadings as contained in these paragraphs are material pleadings, question of striking off such pleadings does not arise; that they are relevant and self sufficient; that in the light of the

averment in the written statement filed on behalf of the respondent No.1 indicating that the respondent No.1 denies that he had supplied arrack sachets found in the vehicle which was permitted to be used for election petition, it cannot be said that the election petitioner had not placed material particulars in the context of the petition pleadings; that the application lacks substance and merit and is required to be dismissed.

17. The burden of the objections in opposition to the application is that the petition does contain material facts as also the particulars of allegations of corrupt practice; that the specific allegation is that the respondent No.1 had distributed the arrack sachets to the voters in the constituency on the previous day of elections which amount to corrupt practice; that the respondent No.1 was, in fact, caught red handed in this act and therefore there are sufficient pleadings and particulars in the petition; that it is not deficient in any manner; that the application requires to be dismissed and the matter taken to trial.

18. I have heard Sri Ashok Haranahalli and Sri Krishnamurthy, learned counsel for the applicant and Sri S.M. Chandrashekar and Sri Malipatil, learned counsel aappearing for the election petitioner.

19. Submission on behalf of the applicant is that the averments as contained in Paragraphs No.6, 8 and 9 even when they are all read together neither reveal a clear allegation of precise corrupt practice with supporting particulars nor do they have material facts to constitute a proper plea of an allegation of corrupt practice. Submission of the learned counsel is that the averments like,

> "that the respondent No.1 secured 32,610 votes by corrupt practice".
>
> "that 1st respondent has been elected by corrupt practice by distributing arrack sachets to voters on the previous day of the election" and
>
> "that the respondent No.1 not only used arrack sachets for distribution to the voters in the village called Bhankure, which is coming under the Assembly constituency of Shahabad (SC) 11 to secure votes by corrupt practice."

by themselves do not constitute allegations of corrupt practice until and unless particulars supporting these allegations are forthcoming in the petition itself. Submission is that none of the other averments in paragraphs, 6, 8 and 9 read together constitute any particulars which is supportive of such allegation of corrupt practice. In the absence of any supportive particulars, a general allegation of corrupt practice by itself cannot stand as the three allegations referred to above by themselves do not indicate the manner in which the indulgence in corrupt practice has roped in the voters in favour of the respondent No.1; that the distribution of arrack sachets to voters on the previous day of elections is not at all averred with date, place and time and the persons involved in the same nor the description of any other type of corrupt practice with particulars are forthcoming and as such these allegations as they cannot stand by themselves are required to be struck off.

20. In support of the submission that an allegation of corrupt practice which is not backed by full and proper particulars of the precise corrupt practice and averments which even when read together do not indicate as the averment describing the precise corrupt practice, are averments which do not constitute a cause of action in support of the petition for seeking the relief, learned counsel for the applicant has drawn the attention of the court to the following decisions;

(a) 'DHARTIPAKAR MADAN LAL AGARWAL Vs. SHRI RAJIV GANDHI' [AIR 1987 SC 1577]-[Paras 8,10,11 & 14]

(b) 'R.P. MOIDUTTY Vs. P.T. KUNJU MOHAMMED AND ANOTHER' [AIR 2000 SC 388]-[Paras 30, 31, 33 & 35]

(c) 'AZHAR HUSSAIN Vs. RAJIV GANDHI' [AIR 1986 SC 1253]- [Paras 11, 12 & 22] and also

(d) 'JAIPAL SINGH Vs. SMT. SUMITRA MAHAJAN & ANOTHER' [2004(4) SCC 522] - [Para 9]

21. The objection taken with regard to the averments in Paragraph-10 of the petition is in the context of the requirement of section 83(1)(a) of the Act that the averment lacks material facts. In this context, Mr.Ashok Haranahalli draws the attention of the court to the provisions of Section 9-A of the Act which occurs in Part-II of the Act which provides for the qualification and disqualification of the candidates contesting an Assembly or parliamentary election. Section 9-A is the specific disqualification for a person who continues to hold a contract in his favour entered into between the Government, in this case the State Government, for executing the contract for supply of goods or any services and which continues and

subsists on the relevant date. Learned counsel points out that the Paragraph does not say as to what is the contract which subsisting on the election date as between the respondent No.1 and the Government; that the Paragraph only indicates that the respondent No.1 was a contractor prior to the election but does not aver that he had a subsisting contract with the Government on the date of the election and even for providing any particulars, the averment expressly relegates that occasion to a later date when the petitioner applies and obtains certified copy and it will be produced at the stage of the evidence. Submission is that the Paragraph by itself while lacks in material facts, the request for production of some evidence at a later point to make up this deficiency is not permitted in law and assuming that it can be so produced, it cannot constitute a plea with material facts as at the time of presentation of the petition and as such this Paragraph is also required to be struck off applying the principles of Order VI Rule 16 of CPC. In this regard, learned counsel has placed reliance on the decision of the Supreme Court reported in **'AZHAR HUSSAIN Vs. RAJIV GANDHI' [AIR 1986 SC 1283]** at Paragraph-28 to the effect that if anything is claimed as an integral part of the petition and is not so produced at that time, it cannot be said that the petition has complied with the requirements of containing material facts as envisaged under section 83(1)(a) of the Act. Learned counsel also submitted that withholding of the information on such plea from the respondent by not so pleading in the petition also amounts to deprivation of an opportunity to the respondent to meet the averment and as such what is lacking as of now cannot be permitted to be made good later either by way of producing evidence or in any other manner.

22. In so far as the request for striking off the pleadings in Paragraph-10 of the petition is concerned, Sri Ashok Haranahalli, learned counsel for the applicant has called in aid two additional grounds. It is firstly contended that the contents of this Paragraph has not been supported in the affidavit filed along with the petition either as averments within the knowledge of the petitioner or based on the information the petitioner has received. Submission is that in the absence of an averment in the affidavit indicating the basis for the averment in the petition, the averment cannot be sustained.

23. The alternative submission in this context is that the manner of verification of a plaint in the present case, the election petition, as contemplated under Order VI Rule 15 of the Code of Civil Procedure is that apart from the verification, it should be supported by an affidavit of the plaintiff. If this requirement is applied, as per the submission of the learned counsel, there being no averment at all in the affidavit with regard to the contents of Paragraph-10, requirement of Order VI Rule 15 of CPC is not at all met in so far as it relates to the contents of Paragraph-10 of the petition and for such reasons also the contents of the Paragraph should be struck off. In support of the submission, the learned counsel has relied upon the following decisions:

(a) 'R.P. MOIDUTTY Vs P.T. KUNJU MOHAMMED AND ANOTHER' [AIR 2000 SC 388]- [Paras 33, 34 & 35]

(b) 'JAIPAL SINGH Vs SMT. SUMITRA MAHAJAN & ANOTHER' [Paras 9 & 11]

24. Per contras, submission of Sri Chandrashekar, learned counsel for the Election Petitioner and the respondent in the application is that the contents of Paragraph-6 does indicate that the respondent No.1 had indulged in the action of distribution of arrack sachets to the voters which is an allegation of corrupt practice within the meaning of provisions of Section 123 of the Act; that the contents of Paragraph-8 also indicate that the respondent No.1 had, in fact, got elected by distribution of arrack sachets to voters on the previous day of election; that this action is in the nature of an allegation of corrupt practice; that the averment is a relevant averment and the other parts of these Paragraphs are particulars supporting this allegation of corrupt practice and if so no part of Paragraphs 6 and 8 can be characterized as either unnecessary, frivolous or vexatious, leave alone being scandalous and therefore, there is no occasion to strike off these pleadings in the petition.

25. Drawing attention to the contents of the application and the affidavit in support of the application, learned counsel submits that the objection taken is only on the ground of want of full particulars. Learned counsel submits that this objection is not tenable as the allegation of corrupt practice is linked to the act of seizure of the Tata Sumo vehicle carrying arrack sachets and the plea with regard to the incident of seizure of this vehicle carrying arrack sachets constitutes the particulars of the allegation of corrupt

practice and as such the averments in this Paragraph contains both allegations and particulars and cannot be struck off as sought for in the application.

26. Even with regard to the objection taken about the contents of Paragraph-8 of the petition, submission is that the affidavit in support of the application for striking off the pleadings does not specifically pin point as to which particular plea or averment is unnecessary, frivolous or scandalous and as such the application does not achieve the purpose for which it is filed. Submission with regard to the prayer for striking off the contents at Paragraph-9 is also on the same lines.

27. With regard to the prayer for striking off the plea in Paragraph-10 of the petition is concerned, learned counsel for the petitioner submits that the plea specifically avers that the respondent No.1 was under a disqualification at the time of the election, a plea which is very relevant for the purpose of deciding the election petition; that the plea, in fact, is one which conforms to the disqualification referred to in Section 9-A of the Act; that the plea being categorical and clear, production of a certified copy to evidence at a later point of time; that the respondent No.1 had suffered such disqualification at a later point of time cannot and does not detract from the plea; that, in fact, when the courts have taken the view that for amplifying the full particulars of corrupt practice, an amendment may be permitted on similar lines and for amplifying the particulars with regard to the plea in Paragraph-10 about disqualification of the respondent No.1 for contesting the election also, the petitioner can be permitted to amend by such production and if that is permissible, there is no occasion to strike off the contents of this paragraph.

28. Sri Chandrashekar, learned counsel for the petitioner, further submits that with regard to non-compliance of the requirements of Section 83(1)(c) of the Act and the affidavit in support of the petition not making a distinction between the averments based on the personal knowledge and the averments based on the information as contained in the election petition, courts have interpreted that the provisions of Section 83(1)(c) of the Act are not mandatory; that assuming that something is lacking, it can be supplemented or made good by indicating the actual position with regard to the averments already contained in the petition. In this regard, learned counsel for the petitioner places reliance on the decision of the Supreme Court in the case of **'CHANDRAKANT UTTAM CHODANKAR Vs. DAYANAND RAYU MANDRAKAR AND OTHERS' [2005 AIR SCW 19].**

20. The question that arises in the context of the application under Order VI Rule 16 of CPC is as to whether any part of the petition pleadings is required to be struck off applying the principles of Order VI Rule 16 of the Code of Civil Procedure.

30. While the provisions of Order VI Rule 16 of the Code of Civil Procedure is an enabling provisions which allows the court to focus attention on the contents of pleadings, in the sense that, the pleadings should be relevant for the purpose of the suit or a petition; that it should be precise, it should not be one malign the image or the reputation of the defendant or be unduly lengthy which could ultimately result in missing the real issue in the case. The object is obviously to retain only such pleas which are relevant for the purpose of deciding the case.

31. While this is an enabling provision under the Code of Civil Procedure, the more important aspects of contents of election petition in the context of a prayer for setting aside an election or declaring the result of the same are found in Section 83 of the Act. The basic requirement of every election petition is that it should contain concise statement of material facts on which the petitioner relies in terms of Section 83(1)(a) of the Act and if the petition is one involving allegations of corrupt practice, it should further contain as full as statement as possible of the names of the parries alleged to have committed such corrupt practice and the particulars of such names, place, date and time of commission of each such practice, nature of corrupt practice to be described in full as per Section 83(1)(b) of the Act.

32. In the derivations cited above, referred to earlier, the courts have interpreted that the provisions of Sections 83(1)(a) and 83(1)(b) of the Act are mandatory and in the absence of the compliance with the requirements mentioned in this provision, an election petition does not take off.

33. In the present case, the election petition is presented on the ground of commission of corrupt practice on the part of the respondent No.1 as also on the ground of the respondent No.1 suffering under a disqualification in terms of Section 9-A of the Act.

34. On an overall reading of the contents of the petition, particularly, Paragraph-6, 8 and 9, it can be understood that these Paragraphs are in the context of an allegation of corrupt practice on the part of the respondent No.1. The allegation of corrupt practice as noticed earlier can be understood to be that the respondent No.1 has secured all his votes by corrupt practice which corrupt practice is further sought to be pin pointed as one indulged in by the respondent No.1 by distribution of arrack sachets to the voters on the previous day of the election. These sentences contained in Paragraph-6 and 8 can definitely constitute an allegation of corrupt practice. To that extent, it cannot be characterized that they do not contain a relevant plea.

35. In so far as contents of Paragraph-9 is concerned, the contents can be understood as one elaborating the earlier allegation that the respondent No.1 had used arrack sachets for distribution amongst voters and that it had happened in the village called Bhankure and though the sentence is left incomplete and there was an attempt to make this good by an application for amendment of the plea, that application having been rejected, the pleadings has remained as pleaded in the original petition and at the best it can be understood as one either the respondent No.1 had used other modes also apart from distribution of arrack sachets in the village of Bhankure or in the alternative that such arrack sachets were distributed not only in this village but in other villages also. Such understanding can only be by a process of reasoning and not by what is actually pleaded.

36. Be that as it may, the question is as to whether the rest of the pleas in Paragraph-6, 8 and 9 apart from what is noticed above as an allegation of corrupt practice also remains in the petition for final determination.

37. This can happen if the rest of the pleadings are in the nature of full particulars supporting the allegation of corrupt practice. As noticed earlier, allegation of corrupt practice can at best be understood as one of distribution of arrack sachets to the voters for winning the election by the respondent No.1. If the other averments in the three Paragraphs are in the nature of full particulars with relevant names, plac, date etc., it also answers the requirements of Section 83(1)(b) of the Act and can sustain the allegation of corrupt practice also.

38. The incident referred to as constituting full particulars of the allegation of corrupt practice is an incident of seizure of the Tata Sumo vehicle bearing registration No.KA-28M-1402 by the Excise Department and a check of the vehicle at about 6 a.m. on 19.04.2004 at 'Dominate Dhaba' near Bhankure village and as it was found that the vehicle contained about 1,410 sachets of arrack; the driver ran away and the Excise Department seized the arrack sachets as well as the vehicle and they also noticed in the vehicle a pass issued by the Returning Officer indicating that the vehicle had been permitted for use for election canvassing of Bharatiya Janata Party candidate of SC-11, Shahabad constitutency wherein the respondent No.1 had contested. It also says that the Special Officer of the Excise Department filed a complaint on the same day against the driver, owner and the respondent No.1. The complaint is said to have been received on 19.04.2004 at 4.30 p.m. and that the case had been registered at Shahabad Rural Station in FIR No.561/ 2004, the copy of the application filed by the investigating agency- the Police before the JMFC, Gulabarga and the copy of the FIR are also produced as Annexures-B & C to the petition.

39. A perusal of Annexure-C indicates that the complaint is with regard to possessing unathorizedly 1,410 sachets of arrack, in all about 141 ltrs., and transporting it without a valid permit etc., and being caught in such act. The link to the respondent No.1 is that the vehicle had been authorized to be used for the election canvassing on behalf of the respondent No.1. The FIR indicates that the cases that can be registered are for violations under the Excise Act.

40. The narration about this incident as also the contents of the complaint does not anywhere indicate that the authorities found that the arrack sachets were being distributed to any of the voters or for any other person for that matter. The complaint by itself does not indicate that there was distribution of arrack sachets to the voters. A reading of the rest of the pleas in Paragraph-6, 8 and 9 also indicate that there is no plea that arrack sachets were, in fact, distributed to any voter at a particular place and time. The particulars if at all as could be found in Paragraph-9 is general and more amounting to an allegation in particular which reads.

"that the respondent No.1 not only used arrack sachets for distribution to the voters in the village called Bhankure"

and there is not other supporting plea which can constitute particulars in support of the allegation of corrupt practice as noticed earlier as can be culled out on a combined reading of Paragraph-6 and 8 of the petition. Unless an allegation of corrupt practice, assuming that it does pass the test of containing materials facts in terms of section 83(1)(a) of the Act is also supported by full particulars, in furtherance of such facts, the further test of full particulars being not answered in terms of section 83(1)(b) of the Act, the allegation of corrupt practice cannot survive on its own and it has to be struck off.

41. The contents of Paragraph-6, 8 and 9 being one for the purpose f averments relating to the allegation of corrupt practice leveled against the first respondent and if the allegation of corrupt practice viz., the first respondent had obtained all the votes polled in his favour by resorting to the practice of distribution of arrack sachets to the voters in the constituency, cannot survive for the reason that it is not supported by full particulars as contemplated under Section 83(1)(b) of the Act, then none of the averments in Paragraph-6, 8 and 9 remain for consideration in the election petition and all these three Paragraphs are required to be struck off.

42. In so far as the averments contained in Paragraph-10 of the election petition are concerned, the averments are one relating to disqualification the first respondent had incurred, one coming within the scope of Section 9-A of the Act and a disqualification which the petitioner alleges against the first respondent is for the reason that the first respondent had a contract for execution of certain works in favour of the State Government.

43. When the averments in Paragraph-10 are not one relating to any allegation of corrupt practice, provisions of Section 83(1)(b) of the Act is not attracted, but the test can only be under Section 83(1)(a) of the Act. Here again, the submission of Sri Ashok Haranahalli, learned Counsel appearing for the first respondent, who has filed the application for striking off pleadings, is that this Paragraph does not contain the material averments even for the purpose of bringing it within the scope of a disqualification referred to in section 9-A of the Act.

44. The arguments are many-fold. It is firstly contended that the averments in Paragraph-10 don not even assert that the first respondent had a subsisting contract for the supply of goods or execution of any work on the relevant date. Learned counsel for the first respondent submits that the relevant date can be the date fixed for filing of nomination papers or the date of election, depending upon the stage and proceedings in which the particulars date assumes significance and importance. It is submitted that the disqualification of this nature can be used before the Returning Officer for the purpose of seeking rejection of the nomination papers in terms of the provisions of Section 36(2)(a) of the Act, and in such circumstance, the date of scrutiny will be important and the averments should be that on the date of scrutiny, the candidate had a subsisting contract between him and the government for the purpose referred to above. This having not happened and the petitioner having not objected to the filing of nomination paper, learned counsel for the first respondent submits that the next date can only be the date of election, in the sense the date of declaration of the result, as defined under Section 67A read with Section 100(1)(a) of the Act, as the petitioner has invoked the grounds referred to in clause (a) of sub-section (1) of Section 100 of the Act, for the purpose of invalidating the declaration (of election) in favour of the first respondent. The learned counsel for the first respondent submits that the averments in Paragraph-10 of the petition do not positively indicate that on the election date i.e., on the date of declaration of results, the first respondent had such disqualification. It is also submission of learned counsel for the first respondent that in fact no particulars or the details of the contract, its validity period, nature of the contract etc., are also forthcoming in this Paragraph. In this context, learned counsel for the first respondent submits that the contents of Paragraph-10 are woefully bereft of material facts that are required to be pleaded in terms of Section 83(1)(a) of the Act. The other contention of the learned counsel for the first respondent is in respect of the manner of verification with regard to the contents of this Paragraph.

45. Though Sri S.M. Chandrashekar, learned counsel for the petitioner has sought to contended that the averments in Paragraph-10 of the petition can be clearly understood as averments for the purpose

indicating a disqualification as against the first respondent in terms of 9-A of the Act, the question is as to whether the contents of this Paragraph when read as a whole, contains such material facts as are required to support the version of the petitioner that the first respondent had incurred a disqualification?

46. While the contents of Paragraph-10 do not categorically assert that the first respondent had a disqualification for contesting the election on the date of the election, but only vaguely says that before contesting the election, the first respondent was a class-I contractor and was doing works under the State governments, the further particulars such as nature of the contract or its subsistence as on the relevant date are conspicuously absent, but the furnishing of the same is sought to be relegated to a later day i.e. after obtaining a copy of the certificate issued by the public works department authorities, to be produced at the time of evidence. A plea cannot be relegated to be pleaded at the time of evidence. Evidence is only to support the plea and not to supplant a plea.

47. In an election petition, pleadings are very essential, relevant and precise pleadings are inevitable and though, no doubt, in terms of the provisions of the Code of Civil Procedure, such pleading is required even in respect of plaints presented before a civil court, it is a fortiori so in the case of election petitions presented under the provisions of the Act. While scrutiny as to the compliance of the requirements of the rules is rather slack in the case of a plaint, in a civil suit, in an election petition, the compliances are insisted scrupulously and non-compliance of the essential requirement is fatal to the petitioner. Such is the law developed in the context of consideration of an election petition by courts and it is precisely in this context the decisions of the Supreme Court in the cases of **DHARTIPAKAR MADAN LAL AGARWAL Vs SHRI RAJIV GANDHI, R.P. MOIDUTTY Vs P.T. KUNJU MOHAMMED AND ANOTHER** and **AZHAR HUSSAIN Vs RAJIV GANDHI,** referred to earlier assume significance.

48. Though Sri S.M. Chandrashekar, learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of **CHANDRAKANT UTTAM CHODANKAR Vs DAYAND RAYU MANDRAKAR [2005 AIR SCW 19],** it can have significance only in the context of insistence of procedural compliance and cannot have any bearing on the compliance with regard to substantial provisions. The petition averments are deficient on material facts not merely due to procedural non-compliance, but also due to non-compliance with substantial provisions, in the sense the petition does not contain necessary averments at all. The manner in which the affirmation affidavit is sworn to and the affirmation affidavit is not one in respect of the contents of Paragraph-10 of the election petition, there is definitely a non-compliance of requirement of Order VI Rule 15 of the Code of Civil Procedure, as the contents of this Paragraph, whatever it contains, are also not affirmed on oath. The petition itself contains verification including this Paragraph at the end of the petition, but here again, the argument on behalf of the first respondent is that the very verification is also more an amalgam of personal knowledge and information and no distinction has been maintained.

49. It is not necessary for the purpose of this case and the petition to go into further details in regard to requirement of compliance with the provisions of Order VI Rule 15 of Code of Civil Procedure, as I am of the clear view that the contents of paragraph-10 read as a whole, however liberally or generously, does not contain the material facts to come up with the allegation that the first respondent had a disqualification for contesting the elections, a disqualification which can be termed as one contemplated under Section 9-A of the Act. If the material facts, particularly with reference to the precise averments of a particulars disqualification incurred by the first respondent, is lacking in the petition, then there is no scope for retaining this Paragraph in the election petition. It is accordingly struck off.

50. An application under Order VI Rule 16 for striking off unnecessary and irrelevant pleadings, even if allowed, by itself, does not achieve the purpose of the application, in the sense, the petition still remain the election petition minus the Paragraphs struck off. It is precisely for this reason that another application is filed invoking the provisions of Order VII Rule 11 for dismissing the election petition on the ground that the petition does not disclose a cause of action for the purpose of maintaining the election petition.

51. While the application in IA-II/ 2004 under Order VII Rule 11 of the Code of Civil Procedure is for the purpose of praying for dismissal of the election petition on the premise that it does not disclose any cause of action, there is not much dispute between the two learned counsel that the petition or contents of the petition that survive after the Paragraphs 6, 8, 9 and 10 are struck off, is one which does not reveal

much of a cause of action for the purpose of maintaining an election petition. Sri S.M. Chandrashekar, learned counsel for the petitioner fairly submits that if the averments contained in Paragraphs- 6, 8, 9 and 10 of the petition are removed, nothing much remain in the petition and the petition itself cannot survive without these Paragraphs. In the circumstance, the election petition, after deleting Paragraphs 6, 8, 9 and 10 of the petitioner, does not remain for the purpose of consideration of the election petition or to take it to trial in the sense that it does not reveal a cause of action for examination by the courts.

52. Accordingly, this election petition has to be rejected, allowing the application in IA-II/ 2004.

53. In the result, IA-II/2004 and IA-IV/2004 are allowed Consequently, the election petition itself is dismissed.

By Order,
TAPAS KUMAR
Secretary,
ELECTION COMMISSION OF INDIA.

PR-15

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001
ಸಿ.ಆ.ಸು.ಇ.1 ಚುಕಅ.06, 23ನೇ ಜನವರಿ, 2006

Dated:4th January, 2006
14 Pausa, 1927 (Saka)

NOTIFICATION

No.82/KT-LA/(12/1999)/2005:- In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951). the Election Commission of India hereby publishes the Judgement/ Order of the High Court of Karnataka. Bangalore dated: 29.09.2004 in Election Petition No.12 of 1999.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
Dated this the 29th Day of SEPTEMBER 2004
BEFORE
THE FONBLE MR. JUSTICE A.M FAROOQ
ELECTION PETTION NO. 12/1999

BETWEEN:

Sri Rajendiran, S/ o Seetharam,
Aged 40 years, No. 40, Rangaiah Compound,
III Cross Road, Robertsonpet,
Kolar Gold Fields. ...Petitioner
(By Sri P.S Manjunath & H C Shivaramu - Advocate)

AND

1. Election Commission of India
(DELETED V/O DATED 2.3.2000)
2. The Returning officer
(DELETED V/O DATED 28.2.2002)
3. M Backthvachalam,
Major, s/o Murugesh, No. 1777, 5th Cross Road,
Robertsonpet, Kolar Gold Fields.
4. Vijayakumar,
Major, s/o Varadaraj, No. 184, I Block, Dr. Ambedkar Nagar
Corigaum, Kolar Gold Fields.
5. Dr.K Thinagaran,
major, s/o Kamalakannan, Near Mahindra Vihar,
Gautammagar Extension, Robertsonpet, Kolar Gold Fields.
6. T S Mani, s/o Gangan, major,
No. 552, North Gilbert's, Marikuppam,
Kolar Gold Fields.

7. S Albert Anand,
   Major, s/o Selvanayagam, 79, C A Block, Marikuppam, K G F.
8. T Karunanidhi.
   Major, s/o Thambuswamy, 23, South Tank Block,
   Koramandal, Kolar Gold Fields.
9. D Nirmala,
   Major, w/o Anandakumar, No. 258, North Gilbert's
   Marikuppam, Kolar Gold Fields.
10. E Ravi chandran,
    Major, s/o Ellappan, No. 6, New Oriental Line,
    Koramandal, Kolar Gold Fields.
11. M Venkatesh,
    Major, s/o Manikkam, Muthu Compound, IV Block,
    Robertsonpet, Kolar Gold Fields.
12. Dass Chinnashauri
13. Eddy Thomas } DELETED v/o
14. Robert } DATED :28.3.2000
15. A.Divyanathan
16. Velanganni, Majoor,
    President, Karnataka Christian
    Murnatra Munnani, K G F Branch,
    Chamarajpet, Kolar Gold Fields.
17. Pastor. Raja Dass } DELETED v/o
18. Liaquat Ali } DATED : 28.3.2000

.....................RESPONDENTS

(By Smt. Pramila Nesargi Advocate for R-5)

Election petition filed under Section 81 of the Representation of people Act, 1951 by the petitioner candidate at 1999 General Election to the Karnataka Legislative Assembly Constituency No. 71, K G F (SC) Assembly Constituency held on 5/9/1999 praying to order recruiting, recounting/ re-totaling of all the votes polled in favour of the petitioner and the third respondent and also the rejected votes, declare the election of the third respondent as void and declare the petitioner as having been duly elected by the Constituency, declare the petitioner or any other person as having been duly elected to the No. 71, Kolar Gold Fields (SC) Assembly Constituency etc.

This petition having been heard and reserved for orders, coming on for pronouncement before the Court today, Court made the following :

ORDER

This election petition is filed u/s 81& 84 of the Representation of Peoples Act 1951. The petitioner has challenged the validity of the declaration of election made by the second respondent on 7th October, 1999 declaring that third respondent as elected to the Karnataka Legislative Assembly from No. 71, Kolar Gold Fields (SC) Assembly Constituency of Kolar Distrist in the General Election held on 5/9/1999. The petitioner had contested the said election as a candidate sponsored by the Republican Party of India while the third respondent contested the election as a nominee of the All India Anna Dravida Munnetra Kalagam. The petitioner has also made other contesting candidates as respondents. It is the case of the petitioner that the KGF Assembly Constituency, which is a reserved constituency (SC) is bifurcated into mining and non-mining areas. Different sets of local self government namely KGF Sanitary Board and Robertsonpet City Municipality are in existence. The Commissioner of the Robertsonpet Municipality was the Returning officer for the Assembly Constituency and the entire staff of the Municipality are officials subordinate of the Returning Officer. That the third respondent was a President of the said Municipality which was under suspension. The entire Municipal staff appears to be under the third respondent and accustomed to obey his commands, that the third respondent at the time of revision and preparation of electoral rolls influenced the second respondent in the preparation of electoral rolls and at the behest of the third respondent several names including the names of dead persons were inserted.

That despite the AIADMK party was not a recognized political party in this State and the nomination of the third respondent should have had the support of 10 proposes under Section 33 proviso of the Representation of Peoples Act hereinafter referred to as the Act That the second respondent despite objection from the petitioner brushed aside the objections and accepted the nomination paper of the third respondent. The said acceptance is illegal. That the Two Leaves symbol which is the reserved symbol of AIADMK party only in the State of Tamil Nadu and union territory of Pandichery but in Karnataka being not a recognized political party as provided in the SYMBOL ORDER. According to the Symbol order the symbol " Two Leaves" should be treated as a free symbol in this State and even though many candidates have sought for the said symbol the second respondent showing under favour allotted the symbol to the third respondent to further his election prospects. That no effective steps was taken by the second respondent for enforcing the Code of Conduct. That even during the training period for electoral staff the third respondent exerted undue influence and the second respondent deliberately with a view to aid the third respondent took no notice of the wanton violation of the code of conduct by the third respondent. Further the second respondent did not take notice of the fact that on the date of filing nomination the third respondent had imported large number of party workers from Tamil Nadu who were armed with deadly weapons and roaming the streets of Kolar and creating a fearful atmosphere which made 90% of the shops in KGF to be closed. That even two days earlier to the voting day the third respondent through his men including his brothers stored 25 cases of brandy and other illicit liquor unauthorizedly which were seized and FIR was filed before the Court. No action appears to have been taken in that regard. That the petitioner gave a written complaint on 3/9/1999 to the second respondent to provide extra night patrolling in the residential area but no action was taken. That the third respondent freely indulged in getting voting and other such illegal methods. while counting ballet papers were found bundled together which clearly show that the ballet boxes were not sealed That in the course of counting there appears to be no attempt whatsoever made to tally the ballet papers account as contained in Form No. 16.

That there were a many as 159 polling booths in the constituency. Large scale impersonation took place. There was rigging of votes. Several outsiders were brought and made to vote by the third respondent.

On the date of polling the petitioner came to know that the polling officer of Both Nos. 40& 41 had sent the polling agents outside the polling booth and on enquiry the petitioner came to know that they were sent out because they were seen rounding of all the serial numbers in the voters list. The polling was stopped for nearly two hours and normalcy was tried to be restored by the second respondent. The Second respondent did not bring to the notice of the first respondent about the occurrence of the said incident and the diaries of the Presiding Officers of the booths concerned also did not show about any such incident. That the presiding Officers of polling booths 39, 40 & 41 did not send any report to the first respondent about the cases being put regarding intimidation by the supporters of the third respondent.

During the course of counting it was noticed by the petitioner and his counting agents that in all the tables 1 to 13 large number of ballet papers bore the impression of the seal on the reverse of the ballet papers. It is stated that since the rubber stamp seal is affixed on the front of new ballet papers and the ballet papers are folded in four fold, there is no possibility of the impression of the rubber stamp appearing at the back of the ballet papers. Therefore, according to the petitioner, the ballet papers containing impression on the reverse side would show that the rubber stamps were affixed one after the other while putting the ballet papers even before the ink of the rubber stamp on the next ballet paper had dried. According to the petitioner, it amounts to rigging of votes. That in the course of counting all instructions given by the first respondent were observed in the breach. That the counting officials according to their whims and fancies were putting aside the ballet papers on the ground that they were invalid.

After the closing of the counting of the invalid ballet papers numbering about 2000 without giving an opportunity the second respondent declared them invalid. That the petitioner and his election agents were not even permitted to note down the serial number of the ballet papers that were rejected. No reasons were given for the rejection. That on the date of counting which was held in the office of the District Sericulture Officer, Kolar, 26 tables had been arranged for counting out of which 13 were meant for counting of Assembly Constituency votes and the remaining Parliamentary Constituency Votes. Before opening of the ballet paper boxes during counting the counting agents were not allowed to inspect the seal to find out whether the same was intact or not and everything was done in a great hurry. That the counting agents were denied any opportunity of watching the mixing of ballet papers and bundling them. 25 ballet papers were made in each bundle as per the direction of the first respondent. No time was made available

to verify the bundles. Trays were allotted to different candidates and political parties and before the votes were put in the respective trays there was no opportunity for the counting agents to find out whether the ballet papers have been properly segregated and put in the trays. During counting many of the ballet papers were not found folded which gives room to say that they are spurious ballet papers inserted later on. That as and when the ballet papers were opened the counting supervisors did not tally the ballet paper account in Form N.16 which resulted in counting of large number of bogus votes. That the second respondent did not take any action despite complaint. That there were several discrepancies in respect of polling station No.39 ballet boxes in which 15 to 20 bundles of ballet papers it was found folded four fold and there were nearly 150 such ballet papers in which votes were cast in favour of the third respondent.

That the Retiring officer took decision not to cont the votes and had the votes put into the ballet boxes along with the bundle and sealed the same and later on informed the candidates and told them that he will get instructions from the first respondent. That the result was not announced on that day itself after the counting was over and it was declared next day morning by the second respondent who stated that he received a fax message from the first respondent directing him to declare the result by excluding the votes of booth No. 39. The alleged fax message received from the first respondent was not shown to the public.

That the votes polled for the MP election should have normally tallied with the ones polled for Assembly Election but substantial differences were found in the votes polled. The total votes polled in MP election is found to be lowered than those of Assembly Election which shows massive rigging. That the action of the first and second respondents directing recounting of ballet papers in booth No. 39. resulted in depriving the genuine votes cast in favour of other contesting candidates being taken into their account. There is nothing to show that the boxes were shown to the counting agents to satisfy them that the seals were intact, that he ballet papers signed in full by the presiding officer under Rule 38 (1) of the Rules were not issued. That at the time of counting no steps were taken to tally the ballet papers account in form No. 16. That immediately after counting the petitioner and other candidates lodged strong protest with the second respondent contending that in the course of counting large scale rigging has been noticed and hence the election results should not be announced at all. Despite the same after counting the second respondent did not tally the voting statistics as reflected in Form No. 16. The presiding officers of the poling booths committed several irregularities which show that the third respondent and his election agents were favored by the second respondent.

That under section 77 of the Act, the third respondent is required to keep a separate and correct account of all the expenditure and under section 78 the third respondent is further required to lodge with the District Electoral officer an account of his election expenses. That though the third respondent has lodged the account of his election expenses the same is not maintained as required under the provisions of section 77 of the Act.

The third respondent is he owner of a printing press by name and style saraswathi printing press by name and style saraswathi printers and the publicity materials were printed in his press itself and the bill issued papers to be false and concocted. That in the course of electioneering an organization called Karnataka Kristhua Munnetra Munnani Thangavayal Kile, (Karnataka Krishua progressive Branch, KGF Branch) in which respondents 12 to 17 are office-bearers and they have issued the pamphlets produced along with the election petition. The pamphlets show that the Christian Priests and pastors had participated and a decision has been taken to support the candidate of one Muniyappa for MP seat and the third respondent for the Assembly seat and requested the voters to support those candidates. According to the petitioner, that 13 obviously an appeal to support the Christian candidates. That such pamphlets were issued at the behest of third respondent and they constitute corrupt practice u/s 123 (3) of the Act. Similarly the 18th respondent who is an Ex-Counsellor issued pamphlets in urdu language telling the Muslims to vote for the third respondent which also comes under the corrupt practice u/s 123 (3) of the Act. All these are done at the instance of the third respondent. The petitioner therefore prayed for the reliefs as already stated above.

The respondents appeared before the Court and filed their statement of objections denying all the averments made by the petitioner.

On the pleadings of the parties, this Court framed the following issues :

(1) Whether the petitioner proves that the third respondent with the aid and assistance of the 2nd respondent had prepared electoral rolls by including the names of the persons not resident in the Kolar Gold Fields Assembly Constituency?

(2) Whether the petitioner proves that the names of the electors were repeated in different polling booths?

(3) Whether the petitioner proves that the acceptance of the nomination paper of the third respondent is invalid?

(4) Whether the petitioner proves that the third respondent was entitled to the reserved symbol of Two Leaves in the State of Karnataka?

(5) Whether the petitioner proves that the 2nd respondent did not follow the Rules relating to the Allotment of symbols?

(6) Whether the petitioner proves that the training to the election personnel was held in Krishna Theatre of which the third respondent is the Lessee?

(7) Whether the third respondent had influenced electoral personnel in the course of training to further his election prospects in the polling booth?

(8) Whether the petitioner proves that the third respondent had held election meetings in violation of the Code of Conduct?

(9) Whether the petitioner proves that the third respondent had stored liquor contrary to the conduct of election rules and the place where the liquor was stored was raided by the police?

(10) Whether the petitioner proves booth capturing of booth Nos. 39, 40 & 41 of KGF Assembly Constituency, and illegal stamping of the ballot papers?

(11) Whether the petitioner has made out a case for recounting of votes?

(12) Whether the petitioner proves corrupt practice under section 123 (3) of the Representation of people Act?

(13) Whether the petitioner proves corrupt practice under section 123 (4) of the Act?

Since the counsel for the respondent was permitted to retire none represented the third respondent and other respondents and I have therefore heard Sri P S Manjunath learned counsel appearing for the petitioner who contended that the evidence on record clearly show that the third respondent has committed illegalities under sections 123 (7), (8), (3) and 123 (A) of the Representation of peoples Act. That the evidence further disclose that the Returning officer has wrongly allotted the election symbol two leaves to the third respondent in contravention Rule 5 of the Conduct of Election Rules, 1969 and Reservation and Allotment of Election symbols Rules, 1968. He, therefore, submitted that only on the above grounds, the petition has to be allowed and the election of the third respondent should be set aside.

This election petition along with E.P. 22/99 which was disposed of as not pressed was posted before this Court for the first time on 17/10/2001 and on that day itself the counsel who appeared for R-2 retired and a new counsel appeared and the parties were directed top file the list of witnesses. The parties thereafter went on taking time on the ground some similar questions allegedly involved in the election petition was being considered by the Hon'ble Supreme Court and ultimately on 28/8/2002 it was submitted by the learned counsels appearing for the parties that the Hon'ble Apex court has rendered a judgment where the Apex Court has held that the Retuning officer is not a necessary party to the election petition and therefore, it was submitted that the election officer who was made R-2 may be deleted and this court therefore, permitted the petitioner to delete the second respondent.

Witness summons was thereafter issued on 3/6/2002. Some records produced by the Returning officer on 7/6/2002. On 2/7/2002 the Returning officer who was by then posted as the Commissioner, Belgaum Municipal Corporation was examined as PW-2. PW-1 who was the municipal Commissioner, Robertsonpet, KGF. He was summoned to produce certain documents and those documents have been produced by him.

On 27/11/2003 it was submitted that the evidence on PW-2 may be closed. On 16/12/2003 the petition was posted for further evidence and on that day PWS 3 to 12 were present before the court but the counsel for respondents 3, 12, 13, 14, 15, 17 and 18 Sri. A.K. Subbaiah was not present and the other counsel who was appearing for another respondent submitted that he has no cross-examination of the witnesses. On 8/1/2004 a memo was filed by Sri. A.K. Subbaiah, learned advocate appearing for respondents 3, 12, 13, 14, 15, 17, and 18. This Court however did not permit the learned counsel to retire did not permit the learned counsel to retire from the case immediately since this Court felt that thee is no material produced by the learned counsel to show that those respondents have been intimated about the hearing of the election petition. Subsequently by an order dt. 12/3/2004 the learned counsel was permitted to retire from the case after he produced the notice of retirement issued by him.

The witness of the election petitioner as per the witness list were present and they duly swore to the affidavits filed by them. The witnesses were not cross-examined.

ISSUE No. 1

It is alleged by the petitioner that the third respondent with the aid of the second respondent included the names of persons who are not the residents of KGF Assembly constituency in the electoral rolls taking advantage of the fact that the second respondent was th Commissioner of Robertsonpet City Municipal Council of which the third respondent was the president, at the time of revision and preparation of electoral rolls. No. doubt it is in evidence that the second respondent Sarfaraz Khan was the municipal Commissioner of KGF from 5/8/1997 to 27/7/2000. However the say of the petitioner that while preparing electoral rolls, a large number of persons who are not the residents of KGF Assembly constituency were included in the electoral rolls by the second respondent at the instance of third respondent, does not find support from any other respondent, does not find support from any other source. There is absolutely no evidence on record to show that persons who are not residents of KGF Assembly constituency are included in the electoral rolls, except the interested say of the petitioner in his affidavit. Not even a single such instance is brought to the notice of the court to show that name of a non-resident of the KGF Assembly constituency is included in the electoral rolls. Hence, the contention in this regard cannot be accepted since, mere allegation in this regard without supporting material to prove such contention will not be of any consequence.

ISSUE No. 2

It is also contended by the petitioner that the names of voters were repeated in different polling booths to provide them an opportunity to vote in more than one polling booth. In this regard also there is no other evidence except the say of the petitioner. Nothing prevented the petitioner in producing documentary proof to show that names of any of the voter is repeated in any of the voters list of any other both in relation to KGF Assembly constituency. Therefore, the contention of the petitioner in this regard cannot be accepted.

ISSUE No. 3

It is contended by the petitioner that there was improper acceptance of the nomination paper of the third respondent by the second respondent. In support of this contention the petitioner states in his affidavit that he has raised objection to the acceptance of the fourth set of the nomination papers of third respondent on the ground that the third respondent has not disclosed the history of criminal case in which he was convicted. It has not been shown before the court that the third respondent was disqualified to contest the election due to any conviction suffered by him and that any such fact was suppressed by the third respondent. There is nothing on record to say that there was improper acceptance of the nomination paper filed by the third respondent. Hence, contention of the petitioner in this regard will have to fail.

ISSUED No. 4 AND 5

It is the contention of the petitioner that the ``Two Leaves'' symbol is not reserved symbol of AIDMK party in Karnataka since the said party is not a recognized party in the state of Karnataka and that the second respondent had deliberately allotted the said symbol to the third respondent so as to further his election prospects. The petitioner has stated in his affidavit that the ``Two Leaves'' symbol cannot be given to the third respondent since AIDMK is not a recognized political party in Karnataka and it is only a registered political party. PW-2 Surfaraz khan (the returning officer) has stated that in cases where the candidate contests as a candidate of any political party recognized in more than two states, as per allotment of symbol rules, he was bound to allot ``Two Leaves'' symbol to the third respondent. The fax message said to have been received from in this regard is marked as Ex. P. 6. The say of the Returning officer in this regard is not in challenge. Hence, the action of the second respondent in allotting the ``Two Leaves'' symbol in favour of the third respondent cannot be faulted. Nothing is produced before the court to say that the second respondent had acted in contravention of the rules in allotting the ``Two Leaves'' symbol in favour of the third respondent. The petitioner has failed to prove that the second respondent did not follow the rules relating to allotment of symbols.

ISSUE No. 6

It is alleged by the petitioner that the training of electoral staff was conducted by District Election officer in Krishna Theatre which is in the possession of the third respondent. Petitioner states in his affidavit that third respondent's brother Sri Kulasekharan is the Lessee of Krishna Theatre. Petitioner does not state that the third respondent is the Lessee of the said Theatre. There is absolutely no proof produced

by the petitioner to show that the third respondent is the Lessee Krishna Theatre. It is also not established that he Krishna Theatre is in the possession and enjoyment of the third respondent.

ISSUE No. 7

It is also alleged by the petitioner that the third respondent influenced the polling staff in the course of the training to further his election prospects. In this regard, there is no other evidence accept the self serving and interested version of the petitioner in his affidavit. An allegation, in the absence of convincing evidence to support such allegation. Petitioner has utterly failed to prove this allegation.

ISSUE No. 8

It is further alleged by the petitioner that the third respondent held election meetings beyond the stipulated hours and there by violated the code of conduct. The interested say of the petitioner in this regard is not supported by any other acceptable evidence. No. complaint filed in this regard is secured before the court nor any proof is produced to show that election meetings were held on behalf of the third respondent in violation of code of conduct.

ISSUE No. 9.

It is alleged in this case that on 2/9/1999 the third respondent had stored liquor for distributing the same to the voters on the date of election. In this regard reliance is placed on Ex. P. 26 (the certified copy of the complaint) and Ex. P. 27 (the certified copy of the FIR). Ex. P. 26 and Ex. P. 27 show about the seizure of the liquor by the police on the complaint filed by one Narayana on 2/9/1999 in the building standing in the name of one Kanthamma and said to be in the possession of one Dayalan. It is also revealed that the police have registered a case against Smt. Kanthamma and Sri Dayalan in that regard. It is the case of the petitioner that the said Dayalan is the brother of the third respondent. For the said reason alone, it cannot be said that the third respondent had stored liquor or that such liquor was stored at the behest of third respondent for distributing to the voters. There is no acceptable evidence in this regard. Mere registration of the case against the third respondent's brother Dayalan is not sufficient to saddle the responsibility of storing liquor on Dayalan much less on the third respondent. What is the final report in the case registered by the police is not forthcoming. At any rate there is no evidence to hold that the liquor that was respondent or at his instance, for distributing the same to the voters.

ISSUE No. 10

Petitioner alleges that in polling booth Nos. 39, 40 & 41 there was booth capturing and illegal stamping of ballot papers. In this regard petitioner has relied on his affidavit and the evidence of P.W.3 John, PW.6 Ravi, PW.8 Kumar and PW.9 Yesunathan, who have filed their affidavits. No. doubt these witnesses have not been cross-examined on behalf of the third respondent. The said fact alone cannot go in favour of the petitioner since on a perusal of the affidavits, it cannot be said that there was booth capturing or rigging of polls by the third respondent or his men. It requires to be noted that the witnesses have nowhere stated that they had filed any complaint to the police or the Returning officer regarding the alleged booth capturing or rigging. It is significant to note that even the petitioner has not stated that he had filed any such complaint to the concerned authorities at the earliest opportunity. There should be clear and acceptable evidence to show that there was both capturing or rigging of election. It is pertinent to note that the petitioner has not examined his polling agents in booth Nos. 39, 40 and 41. According to the petitioner his polling agents in the said booth were Sri Kumar, Sri Rajarathnam and Sri Murali. In his affidavit petitioner states that after the election his polling agents left KGF and that inspite of best efforts, their whereabouts are not traced and therefore, they are not produced as witnesses. They would have been the best witnesses to speak about the irregularities, if any, in the booths while pooling. There is no acceptable evidence to show that there was booth capturing or rigging of pools in booth Nos. 39, 40 & 41. It is not proved that there was illegal stamping of ballot papers in the said booths. If there was any such incident, the petitioner would have filed complaint to the police pr concerned authorities in writing mentioning the details of such incidents. No such evidence is available in this case. Hence, the interest version of the petitioner in this regard cannot be accepted.

ISSUE No. 11

The petitioner seeks an order for recounting of votes on the ground of irregularity in counting of votes by the concerned officials. It is alleged that the bogus votes were counted in favour of the third respondent and the votes that were cast in favour of the petitioner, were taken in favour of the third respondent. In support of the allegation of irregularities in counting, the petitioner relies on the affidavits of his witnesses P.W. 5 Kubendrakumar, P.W. 7 Nagaraju and P.W. 10 Shivakumar in addition to his own evidence. It is no doubt true that the petitioner and his witnesses are not cross-examined on behalf of the

third respondent. That alone is not sufficient to say that the petitioner has made out a case for recounting. A careful perusal of the evidence in this regard shows that the petitioner has not made out a case for recounting. Recount cannot be ordered for the sake of asking. It is well settled that the order recounting of votes, a proper foundation is required to be laid by the election petitioner indicating the precise material on the basis of which, it could be said that there has been either improper reception of invalid votes in favour of the elected candidate of improper rejection of valid votes polled in favour of defeated candidate (D. P. Sharma Vs. The Commissioner and Returning officer - AIR 1984 SC 654). In this case it is not the contention of the petitioner that the he had sought any recount of votes, in writing. The petitioner states that he raised oral objections and not in writing. In his affidavit the petitioner swears that a small protest was lodged to the Returning officer. In AIR 1993 AC 367 (Sathyanarayana Dubhani Vs. Udayakumara Singh and others), it is held that in the absence or contemporaneous evidence to show any irregularity of illegality in the counting, ordinarily, it would not be proper to order recount on the basis bare allegations. It is further held that recount can be ordered only when the court is satisfied on the basis of material facts pleaded in the petition and supported by contemporaneous evidence. In this case there is no such evidence. Hence, it can be safely said that the petitioner has not made out a case for recounting of votes.

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It is alleged by the petitioner that the third respondent has committed corrupt practice for the furtherance of his election prospects by making appeal to Christians and Muslims to vote in his favour. In this regard reliance is placed on the pamphlet issued by Karnataka Christian Progressive Front, K.G.F. Branch marked as Ex. P. 29. it is alleged that the Sai pamphlet is issued at the instance of the third respondent. Firstly, there is nothing on record to support to say of the petitioner that the pamphlet Ex. P. 29 is issued at the behest of the third respondent. Secondly, on a reading of the document, it cannot be said that there is any appeal to vote in the name of religion, in the said pamphlet. The other document relied on in this regard is Ex. P. 30 issued by one Liaqat Ali, Ex. Municipal Councillor, K. G. F, requesting the Muslims to vote in favour of the third respondent. Merely because, such a pamphlet was issued by a person belong to a particular community, it cannot be said that the same is an appeal to vote for any appeal to vote for any person in the name of religion. It is also not established that Ex. P.29 and Ex.P.30 are issued at the instance of the third respondent. It is settled law that charge of corrupt practice is to be proved like a criminal charge and the allegations of corrupt practice will have to be proved by clinching and unimpeachable evidence, beyond reasonable doubt. The petitioner has failed to prove the allegation in this regard. Hence, it cannot be said that the third respondent has committed any corrupt practice U/s 123(3) of the Representation of People Act.

Issue No.13

There is no allegation of proof to the effect that any publication was made by the third respondent or by anybody else at his behest reasonably calculated to prejudice the election prospects of the petitioner. Hence it cannot be said that the third respondent has committed any corrupt practice U/s 123(4) of the Representation of People Act. Even the allegation against the third respondent that he has committed corrupt practice U/s 123(7) of the Representation of people Act cannot be accepted since there is no acceptable evidence to show that the third respondent had obtained or procured, or attempted to obtain or attempted to procure, the assistance of any person in Government Service, for the furtherance of his election prospects. Petitioner has utterly failed to prove the charge of corrupt practice levelled against the third respondent. Though an attempt is made by the petitioner to show that the third respondent had procured or attempted to procure the assistance of the second respondent (the Returning Officer) for the furtherance of the election prospects of the third respondent, the petitioner has failed to prove such allegation and consequently, the charge of corrupt practice levelled against the third respondent will have to fail.

In the light of the above findings on the different issues raised in the petition, this petition is found to be devoid of merits and it is dismissed. In the facts and circumstances of the case, parties are advised to bear their own costs.

By Order,
TAPAS KUMAR
Secretary,
ELECTION COMMISSION OF INDIA.

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